



Quaker Action on Alcohol and Drugs

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## **QAAD RESPONSE TO CAP AND BCAP CODE REVIEW CONSULTATION; ADDENDUM ON ScHARR REVIEW**

Quaker Action on Alcohol and Drugs (QAAD) is a listed group of the Religious Society of Friends (Quakers). QAAD is an independent national charity that has a concern with the use and misuse of all drugs, legal, illegal and prescribed, and with gambling. QAAD offers prevention and information services for Quakers. We also contribute to public debates and consultations on matters relating to our concern and experience. Trustees give their time to QAAD freely, and bring voluntary and statutory experience from settings that include prevention, treatment, medical services and criminal justice. QAAD does not represent the Religious Society of Friends as a whole, but the views we express are grounded in our Quaker principles.

**Question 158: Given BCAP's policy consideration, do you agree that the evidence contained in the ScHARR Review does not merit a change to BCAP's alcohol advertising content or scheduling rules? If your answer is no, please explain why you consider the ScHARR Review does merit a change to BCAP's alcohol advertising content or scheduling rules.**

We do not agree that the evidence contained in the ScHARR review does not merit a change to BCAP's advertising content or scheduling rules. We believe that a tightening of restrictions is warranted, and we support the position that Alcohol Concern has adopted on these issues. We endorse the idea of a ban on the advertising of alcohol on television before the 9.p.m. watershed, and we would also support the proposal that 1/6 of advertising expenditure be devoted to public health messages.

We accept the authority of the ScHARR report and its account of the limitations on the evidence-base. However, we note the wording of the statement: *'there is conclusive evidence of a small but consistent association of advertising with consumption at a population level.'* We also note that, whilst recognising the variable nature of the evidence about advertising limitation and the difficulties of extending it to a UK context, the authors state in the full report:

*'Results vary substantially depending upon which published evidence is assumed to be most applicable to England, with overall changes in consumption of between -0.2% and -2.2%, and the financial value of harm avoided over 10 years ranging from - £0.39bn to -£3.9bn. Similar exploratory analyses for the total elimination of exposure to advertising for under-18s show an overall change in consumption ranging from -0.1% to -0.4%, and*

*the financial value of harm avoided over 10 years ranging from -£0.3bn to - £1.0bn.'* (page 11, SchARR report)

These gains are relatively modest in relation to other measures such as minimum price setting, but even the lower estimated figures would be extremely worthwhile in terms of health and well-being, as well as in terms of social savings.

We acknowledge the specific methodological difficulties the report outlines in relation to banning advertising for under 18s. However, a recent review of the available evidence (Smith and Foxcroft, 2009)<sup>1</sup>, which limited itself to robust, predominantly longitudinal studies, concluded that:

*'The data from these studies suggest that exposure to alcohol advertising in young people influences their subsequent drinking behaviour. The effect was consistent across studies, a temporal relationship between exposure and drinking initiation was shown, and a dose response between amount of exposure and frequency of drinking was clearly demonstrated in three studies. It is certainly plausible that advertising would have an effect on youth consumer behaviour, as has been shown for tobacco and food marketing.'*

Whilst Smith and Foxcroft do not assert that limiting advertising would certainly reduce young people's drinking (because there may be other factors involved other than those the studies controlled for), they note the emerging 'stronger empirical evidence' in this area and its application to policy. Their conclusion also points up the potentially significant role of counter-advertising.

Within the SchARR report we note the middle estimate they consider suggests there would be a particularly strong effect on teenagers:

*'The result of the 'Mid' scenario (37) is an estimated reduction in total consumption of just - 0.3%, but the effects on 11 to 18 year olds are estimated to be much more substantial with a reduction in consumption for that group of -9%. The estimated consequent reduction in harm occurs particularly in the area of crime, with -38,000 offences and a crime costs reduction of - £28m per annum.'* (page 162)

The health and social gains for young people of limiting alcohol advertising warrant a proactive approach. This is particularly the case given that apart from the risks of excessive consumption for young people at the time it occurs, there are indications from the current generation of mid-life drinkers that higher consumption in youth may be sustained into middle years (Joseph Rowntree Report, 2009<sup>2</sup>). Studies also show that early onset drinking in young people is sustained into young adulthood (Andersen et al., 2003<sup>3</sup>) A precautionary approach to these significant risks seems wholly appropriate.

There is further evidence that positive expectations of alcohol intake affects the consumption of young people, and advertising is one element in creating these expectations. A recent naturalistic study also showed that exposure to alcohol images is

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<sup>1</sup> Smith, L., Foxcroft, D., The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies. *BMC Public Health*, Volume 9, 2009.

<sup>2</sup> Smith, L., Foxcroft, D. (2009) Joseph Rowntree Report, *Drinking in the UK* p 86

<sup>3</sup> Andersen, Anette; Due, Pernille; Holstein, Bjorn E.; Iversen, Lars (2003) *Addiction*. 98(11):1505-1511

likely to increase the extent of intake at the time it occurs<sup>4</sup>. As evidence message 10 of the SchARR report summarises, *'There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking.'*

Advertising affects the general culture and individual expectations - and both of these need to modify if the damage from alcohol is to reduce. Public health budgets for responsible drinking information are dwarfed by the amount spent on the positive promotion of alcohol. The proposal that a proportion be used for safety messages is desirable in terms of public awareness - and whilst the potential social savings are uncertain in their configuration, as the SchARR report outlines, some at least are likely.

The consultation discussion inherently raises the question of what level of proof is required before a precautionary approach can and should be taken. We believe that on the basis of the balance of strong probabilities and the desirability of the social goals to be achieved, there is already sufficient evidence for action. The SchARR report suggests that some positive impacts would be likely to result from restrictions in the three areas it outlines, even though the level and types of gain are difficult to estimate. The developing evidence-base relies on policies being adopted and then measured for impact, and no certainty about outcomes can be guaranteed in a UK context except by UK action. We believe, therefore, that the time has come for these restrictions to be adopted. We note that similar measures have been adopted in other European countries, some of which have lesser alcohol problems than the UK. As Pratten and Lovett<sup>5</sup> note:

*'...members of the European Union signed the WHO's European Charter on Alcohol, which declared that 'children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and, to the extent possible, from the promotion of alcoholic beverages'. The result was that each member state reduced the advertising of alcohol addressed specifically to young people. As illustrations: Belgium stopped spirit advertising on commercial TV and all alcohol advertising on radio; France prohibited advertising on TV for alcohol over 1% ABV and on advertising in publications for young people and sports venues; Ireland banned spirit advertising on radio or TV, refused to allow alcohol adverts before sports programmes and insisted that the same advert could appear only once per night on any channel; Italy permits alcohol adverts on TV only after 8pm; Luxembourg radio and TV adverts must not depict consumption of alcohol or feature young people or sportsmen or drivers consuming alcohol; Portugal has restricted alcohol advertising on TV to 10pm and later, and Spain's watershed is 9.30 pm (Institute of Alcohol Studies).'*'

For all these reasons, then, we suggest that two of the measures discussed in the SchARR report - pre-watershed television advertising and public health messages with 1/6 of current advertising revenue - be adopted. Whilst we think in principle a full advertising ban would be desirable on similar grounds, we accept that it may be helpful to start with these limited measures before wider ones are implemented. We note the evidence that advertising restrictions have a more substantial and measurable impact if

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<sup>4</sup> 4 Rutger C. M. E. Engels, Roel Hermans, Rick B. van Baaren, Tom Hollenstein and Sander M. Bot (2009) Alcohol Portrayal on Television Affects Actual Drinking Behaviour, *Alcohol and Alcoholism*, 44, 244-249

<sup>5</sup> Pratten, J.D., Lovatt, C.J. (2006) None for the road: an attempt to identify the responsibility for ethical alcohol service.' Paper presented at the Business Studies and the Environment Conference, Corporate Responsibility Research Conference at Trinity College Dublin, 2-5 September 2006.

they are linked with other harm-reduction initiatives, and hope that a broader approach will be developed. We would, of course, expect that the impact of these restrictions would be rigorously researched to assist further policy development.



## Sainsbury's response to the Consultation on the CAP and BCAP Codes

Sainsbury's welcomes the opportunity it has been given to respond to the consultation on the CAP and BCAP Codes.

### 1. Background:

- 1.1 For context, I have included some key statistics on Sainsbury's:
- 785 stores, of which 276 are convenience
  - 153,000 employees
  - Around 18.5 million customers a week
  - We are a major advertiser both at national and local level. In 08/09 our reported spend was c£61 million. (Source: Nielsen Addynamix spend for national and regional advertising across Outdoor, Cinema, Online, Press, Radio and TV.)
- 1.2 Our corporate goal states "...*We will exceed customer expectations for healthy, safe, fresh and tasty food, making their lives easier every day*". It is not possible to achieve this goal without legal, decent, honest and truthful advertising.
- 1.3 We have 140 years of value based, principled retailing behind us and as our recent strapline states "Our Values Make Us Different".
- 1.4 With this in mind, we are absolutely in agreement with the overarching principles contained in the Codes. However, we have a number of fundamental issues with the Codes and some of the content which we have detailed below.

### 2. General concerns

- 2.1 Sainsbury's welcomes the reduction in the number of Codes but we would question why the reform could not have gone further, resulting in a single Code. This is particularly relevant given that the concept of misleading as defined in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) is not media specific.
- 2.1.1 Where specific differences are required due to the nature of a specific media these could be included within the relevant section of a single Code. This approach has already been adopted in the proposed BCAP Code where the requirements for radio and TV are separated (e.g. Section 4).
- This would ensure that a fully integrated approach is taken to advertising campaigns which often use more than one media type.
- 2.2 Both CAP and BCAP have stated in their consultation documents that the reason for the review to ensure that the Codes are fit for purpose and to reflect changes in the law.

The biggest change in the law since the Codes were last reviewed has been the

introduction of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). This piece of legislation, which is a fully harmonised European directive, fundamentally altered consumer protection in the UK away from prescriptive rules to purposive, principled based legislation that allow many routes to the same end, namely that consumers should not be misled. Our concern is that by trying to adapt very detailed Codes to incorporate the new legislation they 'gold plate' the legislation and require adherence to rules and voluntary codes which the legislation itself does not require. We believe that following the recent ECJ judgment against the Government of Belgium that this approach may be unlawful.

2.2.1 Examples of "gold plating" include:

- the requirements for describing an item as a 'free' item;
- taking into account the 'impression' on consumers instead of assessing whether it would lead the average consumer to take a transactional decision he would not otherwise have taken';
- the need to take account of the Pricing Practices Guide when the Guide is quite explicit that there is no requirement to take account of its provisions;
- the need for any conditions to be clear to any consumer who sees the advertisement only once.

2.3 In Sainsbury's view the requirements set out in the CPRs alone should be used to judge whether an advert is misleading and the Codes in their present format should focus on questions of decency and taste.

2.4 We have additional concerns about the following elements of the Code:

- De facto compulsory nature of the Code
- Lack of transparency in interpreting the Code
- Lack of proper procedures for investigating complaints and hearing evidence
- Lack of appeals procedures against decisions on complaints

2.4.1 The fact that in certain circumstances the "voluntary" Codes go further than the CPRs and use different terminology to that legally defined when describing the factors to be considered when judging if a practice is misleading creates a tension and replaces the principle based legislation with de facto gold plating (see 2.1.1). The de facto element is introduced because it is impossible to place an advert unless it meets the criteria of the Code and in the case of TV and radio advertising is pre cleared against the Code.

2.4.2 Our concerns around lack of transparency relate to the methodology used in assessing complaints; the lack of an independent system of appeals; and the fact that help notes are not consulted on even though they are we believe taken into account when assessing adverts against the Code. This is highlighted by the fact that section 60 in the old Code "how the system works" does not appear to have been mapped across providing even less transparency than we currently have.

### 3.0 Specific comments

The specific comments we have made are in relation to the Code as written and are in no way intended to weaken the comments made in Section 2. We have not attempted to answer every specific question raised in the consultations on the two Codes. We have only commented where a particular issue with the wording of a rule.

### 3.1 CAP Code

#### 3.1.1 Question 1

As already alluded to by our comments in Section 2, the introductory section should identify the role of the Code within the CPRs. Particular mention should be made that the definitive requirement, with respect to not misleading a consumer, is to abide by the CPRs and that the Code itself is voluntary.

The relevant 'sector specific rules' mentioned in 1.4 should be defined.

Section 1.6 refers to marketing communications respecting the principles of fair competition. The CPRs refer to professional diligence. It would be helpful if the Code used the same language or at the very least used wording which reflects this change.

The Code should set out clear time limits for making a complaint (as did the previous Code); investigating a complaint; making an adjudication; for an appeal; and for answering a query from the ASA. In the old Code there was a time limit of 3 months for a complaint in Section 60 – but the mapping document seems to omit a number of provisions of the old Code after rule 57. (See 2.4.1)

#### 3.1.2 Question 3

No, whilst we recognise the intent behind this rule and the use of the words "only once"; we believe that this rule will be impossible to enforce and goes beyond the provisions of the CPRs. The CPRs apply to the average consumer defined as reasonably well informed, observant and circumspect. It may also have the unintended consequence of stifling 'teaser' campaigns where detail and understanding is built up over a period of time.

How would the ASA judge this when holding an advertiser to account?



### 3.1.3 Question 4

No. This may be appropriate for a 'help note' but this is an attempt to reinterpret rules unnecessarily. It should be possible to explain that the advertisement does not refer to normal use. The BCAP Code in Section 3.4 allows for obvious exaggerations ("puffery").

### 3.1.4 Question 5

No. The proposal in 3.28.3 is too prescriptive and goes beyond the CPRs. 3.28 should only apply to 'invitations to purchase' and there is no legal requirement to state each and every age restriction in terms of age related sales. This could be particularly difficult where the age restrictions vary in relation to specific video titles, for example.

### 3.1.5 Question 9

The new revised Code often uses the word 'must' instead of 'should'. This suggests that there is only one route to compliance when the CPRs. As mentioned previously, the CPRs is purposive legislation and adherence to it can be achieved in more than one way. Consequently, we can see no reason for this change.

The suggestion that price statements should take account of the Pricing Practices Guide is an attempt to make law by the back door. The Guide itself says it can be ignored! The section should be re-phrased to make it clear it is one way of securing compliance.

The proposed wording in the 'Principle' to the effect that the ASA will take account of the impression created by the communication goes well beyond the CPRs which refer to the average consumer and the transactional decision test. The Code should reflect the CPRs.

Rule 3.3 should refer to the average consumer.

Rule 3.20 should include packaging as a reasonable charge.

Rule 3.39 should merely repeat the advice in the Pricing Practices Guide and it should clearly be advice.

#### 3.1.6 Question 21

It would be helpful if there was clarity about whether or not information on a website counts as 'easily accessible.' We believe it should.

#### 3.1.7 Question 24

We do not understand the logic behind the differences in verification required between local and national competitions. The same rules should apply to both.

#### 3.1.8 Question 25

It is not clear what is meant, in this instance, by 'independent' judge. This goes beyond the requirements of the Gambling Act. The judge should be independent of the competition not necessarily the promoter. There are many circumstances where it would be appropriate for the promoter to be the judge especially where the promoter's staff and their families are not allowed to enter the competition.

#### 3.1.9 Question 28

Rule 8.12 is impractical. It is not possible simply to switch the promotion to another product given that we would have to hold massive additional stocks of alternative products "just in case". That would merely cause a problem for the supply of that product or in the event it was not needed, huge waste issues.

### 3.1.10 Question 34

It would be helpful to make this section technology neutral given the constant changes to, and innovation in, technology.

### 3.1.11 Question 43

Whilst section 13.10.1 is a correct copy out of the relevant section on the Nutrition and Health Claims Regulations. However, as the Food Standards Agency Guidance states the interpretation of this provision is not that straightforward. We believe that the provisions in the Codes should reflect that reference to terms such as 'rapid' or 'fast' could in certain circumstances be used.

### 3.1.12 Question 46

No.

15.1.1 - The Nutrition and Health Claims Regulation allows the use of any claim likely to have the same meaning in addition to the wording specified in the Annex to the legislation. We believe it is important that this is reflected in the CAP Code. Providing a few examples would be useful, e.g. 'reduced energy' or equivalent wording such as 'reduced calories' or 'less calories'.

The Code cannot go beyond the requirements in the Nutrition and Health Claims Regulation. Marketers have to be able to prove (they are not required to hold documentary evidence) that their product contains the quantity of vitamin or mineral or substance specified under the 'conditions of use' of an approved article 13 claim.

### 3.1.13 Question 52

No. See our response to question 43.

### 3.1.14 Question 55

Many of the many of the provision contained within the legislation are still to be enacted and are subject to long transition periods; some as long as 15 years. Therefore it is important that the Codes are kept up-to-date..

The Codes use a number of terms which have a defined meaning such as food product, low alcohol etc., it is clear that the definitions have to be the same as those in the Nutrition and Health Claims Regulation.

Whilst the Code explains the nutrition claims that can be used and the conditions for using these claims, the treatment of health claims is much sparser. Paragraph 15.1.1 states that authorised claims states that authorised claims in the Community Register may be used in marketing communications. Whilst this is true it is only part of the story for example, Article 10.3 health claims do not need to be authorised or included in the register. The Code should clearly cover the provisions under Nutrition and Health Claims Regulation applicable to all the different types of health claims. The Code should clearly cover the provisions under Nutrition and Health Claims Regulation applicable to all the different types of health claims.

### 3.1.15 Question 57

Although the Nutrition and Health Claims Legislation is a complex piece of legislation which came in to force in July 2007 many of the provision contained within the legislation are still to be enacted and are subject to long transition periods; some as long as 15 years. We believe that should be accurately reflected in the Code.

Additionally the Food Standards Agency and indeed the Commission are revising their guidance as the practicalities of the legislation become apparent.

The Code refers to food and soft drinks while the Nutrition and Health Claims Regulation applies to food and all drinks.

Some of the rules in 15.11 do not follow our understanding of the legal requirements. It is suggested this section be written in a principle based manner or removed completely on the grounds the area it seeks to control is covered by the existing regulatory framework and this is an area of rapid change.

## 3.2 BCAP Code

It is slightly concerning that the BCAP code is considerably longer than the CAP Code. As already stated in 2.1 and 2.1.1 we believe that the BCAP code should be brought totally into line with and included in a single CAP Code. Where there are clear reasons for any differences based on the nature of the media there should be specific references in the CAP text. For this reason many of the comments we have made in section 3.1 are relevant here especially those relating to the CPRs, the voluntary Pricing Practices Guide and health claims.

### 3.2.1 Question 6

It is difficult to understand the distinction being made between TV and radio here. Surely the same principle should apply to both media.

### 3.2.2 Question 8

This seems a sensible inclusion and should also apply to the CAP Code. Section 3.4 is at odds with the much stricter provisions we objected to in Section 3.11 (see response to question 4 above). However we would be concerned about the interpretation of “perception” and how in practice this would be judged.

### 3.2.3 Question 32

Yes. While we agree with the new provisions set out in 13.2 namely, “Advertisement must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle, especially in children”. The remit of this provision should be made clear. It should clarify that the promotion of an indulgent product when the advert does not encourage people to regularly eat the product or to consume it as a substitute for a meal, will not be caught under this provisions.

### 2.2.3 Question 80

The wording used for 13.5.1 is not as clear as it could be. Whilst the provisions have been correctly implemented we would suggest that the sentence: “Comparative nutrition claims may only be made between foods of the same category”, is clearer.

### 2.2.4 Question 84

Question 84 asks if we agree that BCAP has accurately reflected the relevant provisions on Regulation 1924/2006. The following comments refer to section 13.4 of the Code and its sub sections.

Whilst the Code explains the nutrition claims that can be used and the conditions for using these claims, little mentioned is given to health claims. This paragraph states that authorised claims in the Community Register may be used in marketing communications. Whilst this is true it is only part of the story for example, Article 10.3 health claims do not need to be authorised or included in the register. The Code should clearly cover the provisions under Nutrition and Health Claims Regulation applicable to all the different types of health claims.

13.4.2 We believe that the requirements under this paragraph could be interpreted to go beyond the requirements in the Nutrition and Health Claims Regulation. Marketers have to be able to prove, not hold documentary evidence that their product contains the quantity of vitamin or mineral or substance specified under the 'conditions of use' of an approved article 13 claim. They do not have to provide evidence of a health relationship already given a positive opinion by EFSA and approved by Standing Committee.

For nutrition claims, the marketers have to prove that their product contains the quantity required under the criteria laid down in Annex I of Nutrition and Health Claims Regulation for that nutrient or substance when making that claim.

13.11 This paragraph goes beyond the provisions of the EU Nutrition and Health Claims Regulation. The way to establish whether a claim can be made on a product is by assessing it against the nutrient profile set for this purpose and which is currently under development. The OFCOM model which classifies food as HFSS and Non-HFSS should not be used for the purpose of claims.

The Code refers to food and soft drinks while the Nutrition and Health Claims Regulation applies to food and all drinks.

To: BCAP/CAP

By email

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15 July 2009

Dear

**BCAP/CAP CODE REVIEW CONSULTATION ADDENDUM– SCHARR REVIEW**

I write on behalf of Scottish Government in response to the above consultation. Please accept my apologies for the slight delay in responding.

As you may be aware Scottish Government published “Changing Scotland’s Relationship with Alcohol: A Framework for Action” in March 2009. In the Framework we made clear our concern to reduce the impact of alcohol advertising, on young people in particular. We expressed concern that young people are exposed daily to advertising, whether or not it is specifically targeted at them.

We consider that a precautionary approach to the protection of young people in relation to alcohol advertising is justified given that evidence is mounting in relation to:

- the considerable harms which excessive alcohol consumption can cause;
- indications that early introduction to alcohol can lead to misuse in later life; and
- the influence which exposure to alcohol advertising has on young people’s consumption.

**In regard to the last point it is disappointing that BCAP/CAP are so dismissive of the findings of the Sheffield Review, given**



**it identified that *“There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking [by young people]”*.**

In addition your reviews make no mention of the recent review by the European Alcohol & Health Forum’s Science Group study which concluded: *“The findings of the review are clear, namely that commercial communications increase the likelihood that adolescents will start to use alcohol and will drink more if they are already using alcohol.”*

We consider that given the latest evidence the current approach outlined by BCAP and CAP falls short of the requirement under the Communications Act 2003, section 319 (2) (a) to ensure that *“persons under the age of eighteen are protected”*. The BCAP/CAP codes claims to *“prevent appeal to young persons”*, however, we consider that in practice the code simply limits explicit appeal to young people rather than preventing appeal to them.

As indicated Scottish Government considers that a precautionary approach should be adopted, both in relation to the content of adverts, but also crucially to the overall exposure of young people.

Scottish Government recognises that the legislative regime around alcohol advertising is complex and that much of it is reserved. However, we urge UK Government to develop a UK approach to advertising which unequivocally protects children from exposure to alcohol advertising, whether on television, on line or in the cinema. We continue to believe that one way of achieving this is to apply a ban on television advertising before the 9pm watershed.

We would also welcome the development of a co-regulatory approach - working with the industry, UK Government and advertising regulatory bodies – which could address on line advertising effectively.

Yours faithfully



**THE SCOTCH WHISKY ASSOCIATION RESPONSE TO  
THE BCAP CODE REVIEW  
CONSULTATION ON THE PROPOSED BCAP CODE**

**1. Introduction**

The Scotch Whisky Association (SWA) is the industry's representative organisation. Its aim is to protect, promote and grow Scotch Whisky worldwide.

Our 54 member companies include distillers, blenders, bottlers, and brokers of Scotch Whisky, representing around 90% of the industry.

The Scotch Whisky Association has developed its own Code of Practice on the Responsible Marketing and Promotion of Scotch Whisky, drawn up by the industry in 2005 and revised in 2009. The principles of the SWA Code cover all commercial activities in relation to Scotch Whisky and application of the Code is a mandatory condition of membership for member companies across the EU.

We fully support the BCAP co-regulatory system and fully endorse and subscribe to the rules and principles of the CAP/BCAP Codes.

We welcome the opportunity to respond to this consultation. As an alcohol producer trade association we have limited our comments to the questions raised in the consultation on the Code rules in relation to alcohol.

## **2. Response to Consultation questions**

### **Sales promotion sin alcohol advertisements**

#### **Question 111**

Yes we agree that rule 19.11 should be included in the proposed BCAP code.

### **Irresponsible handling of alcohol**

#### **Question 112**

Yes we agree that rule 19.12 should be included in the proposed BCAP code.

### **Alcoholic Strength**

#### **Question 113**

Yes we agree that rule 19.10 should be included in the proposed BCAP code.

In the SWA Code of Practice we clearly state that undue emphasis should not be placed on high alcohol content as a principal basis of appeal to the consumer. Equally we do not think it appropriate

to promote a 'lower strength' product on the basis of strength for the reasons set out in 19.23 of the consultation document.

### **Alcohol in a working environment**

#### **Question 114**

Yes we agree that rule 19.14 should be included in the proposed BCAP code.

### **Exception for children featuring incidentally in alcohol advertisements.**

#### **Question 115**

Yes we agree that rule 19.17 should be included in the proposed BCAP code.

### **Deleted rules – Low alcohol exceptions**

#### **Question 116 (television) Question 117 (radio)**

We agree that the current exemptions for low alcoholic drinks from the rule on implying or encouraging immoderate drinking, buying in rounds, and encouraging excessive consumption via sale promotions, and use/feature of someone who is over 18 as opposed to 25 years and older should be deleted.

### **Other Questions**

#### **Question 118**

Yes, we agree the BCAP rules as set out in the proposed alcohol section are understandable and necessary.

We have no other comment to make.

**Addendum Question 158: ScHARR Review**

Yes we agree the evidence contained in the ScHARR Review does not merit a change to BCAP's alcohol advertising content or scheduling rules.

JUNE 2009

## CAP/BCAP Code Review Consultation

### Response by SHAAP



#### 1.0 About Scottish Health Action on Alcohol Problems

1.1 Scottish Health Action on Alcohol Problems (SHAAP) was established in 2006 by the Scottish Medical Royal Colleges and Faculties to provide an authoritative medical voice on reducing the negative impact of alcohol on the health and well-being of the people of Scotland. SHAAP is a member of the Alcohol Health Alliance UK, an alliance of medical bodies, patient representatives and alcohol health campaigners working together to raise awareness of rising levels of alcohol health harm in the UK.

2.0 SHAAP's response to the CAP/BCAP Code Review Consultation relates to those provisions of the codes that cover the advertising of alcoholic drinks.

#### 3.0 SHAAP's position on the CAP/BCAP codes covering the advertisement of alcoholic drinks

3.1 SHAAP is not responding to specific questions in the consultation concerning the rules governing alcohol advertising. Our general view is that rules covering alcohol advertising should not be a matter for industry self-regulation.

3.2 We are concerned that the way the codes are drawn up in the current system is not sufficiently protective of public health. A consultation process that involves industry and health bodies, organisations with fundamentally incompatible aims and objectives, can only result in compromised standards, even if those standards are then rigorously enforced.

3.3 We are concerned that as a consequence of industry self-regulation, attention is diverted from public debate about whether it serves the public interest to allow the promotion of products that have a substantial negative impact on public health in the UK. Alcohol is no ordinary commodity. It is a dependence inducing psychoactive drug for which there is no 'safe' dose. It is linked to more than 60 types of disease, disability and injury. Alcohol has been ranked the 6<sup>th</sup> most harmful drug in the UK, ahead of tobacco, cannabis and Class A drugs such as Ecstasy and LSD.<sup>i</sup>

3.4 There is a growing body evidence linking alcohol advertising and consumption. A recent systematic review of longitudinal studies of the impact of alcohol advertising on adolescents found consistent evidence to link alcohol advertising with the uptake of drinking among non-drinking young people, and increased consumption among their drinking peers.<sup>ii</sup> Given the substantial burden of harm linked to alcohol use in the UK, particularly in Scotland where the death rate from alcoholic liver cirrhosis<sup>iii</sup> is now one of the highest in the world, SHAAP is increasingly minded to take the view that a complete ban on alcohol advertising will offer the best protection for public health.

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18<sup>th</sup> June 2009

Dear Sir/Madam,

Re: **BCAP Code Review Consultation**

I write on behalf of The Secular Medical Forum (SMF). The SMF is a UK-wide group of healthcare professionals advocating equality of care for all patients, irrespective of their or their doctors' own personal beliefs. We are especially concerned that patients, healthcare workers and the wider public are not disadvantaged by the imposition of other people's personal religious views on them.

The SMF broadly welcomes the proposed BCAP code review guidelines. In particular we would like to comment on the following. The question numbers refer to those in Annex 3 of the consultation document:

**1) Question 62**

**i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?**

The SMF endorses the proposal to allow accurate advertising information about post-conception services as per paragraphs 11.34-11.44 of the consultation document relating to 'Family Planning Centres'.



The Royal College of Obstetricians and Gynaecologists, commenting on 21.5.2009 on the 'Abortion statistics for England and Wales: 2008' states that the earlier a pregnancy is terminated the fewer the complications<sup>iv</sup>.

Women already experience several potential barriers in accessing appropriate care. For example, some GPs and some pharmacists conscientiously object to discussing, prescribing, dispensing or referring women for termination of pregnancy. The reluctance of these professionals to offer the full range of NHS services inevitably results in delay for some women in accessing appropriate services. For some, they will already have decided on their preferred course of action; for others they will be in need of non-judgmental informed discussion to arrive at a decision as soon as possible.

The proposed change to the advertising standards will serve to increase knowledge about alternatives to the NHS system and may lead to women becoming more empowered to request the service from the NHS. Some women, who may otherwise have felt that they had nowhere else to turn, will be able to access abortion services in a timely manner.

- 2) With regard to pre-conception advertising, the SMF endorses the views expressed in paragraph 11.39 of the consultation document that 'members of the audience who might be seriously offended by the nature of advertised services are afforded adequate protection under rules that guard against offence...'

The SMF considers that the needs of potentially vulnerable women who are or might become pregnant should take precedence over the sensitivities of those who might take offence at the advertising of pre-conception information and advice.

### 3) Question 62

**ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.**

The SMF broadly welcomes the proposed requirement for advertisers of post-conception services to state whether or not they refer women for

abortion as per proposed rule 11.11. However, such a rule would fail to discriminate between the pro-life/anti-choice advertiser with an anti-abortion stance, and a non-judgmental organisation not employing doctors and therefore unable to refer directly for abortion. The latter may employ nursing staff, for example, able to offer a comprehensive service including counselling, discussion of the various practical options and subsequent signposting of women in the right direction once her choice had been made.

- 4) The SMF therefore proposes a new rule that advertisers of post-conception services should explicitly state whether or not they are opposed to abortion.

The SMF is concerned that anti-choice organisations delay women's access to abortion. The information provided to women in such settings may be misleading or exaggerated and is usually heavily biased against abortion. Therefore some women, who might have made an informed decision to proceed with an abortion, might not do, on the basis of inadequate or false information.

The SMF is particularly concerned that some women may feel they have nowhere else to turn if their first point of contact turns out to be an organisation with an anti-abortion stance. Some vulnerable women may have to negotiate several hurdles to access any service. It is therefore important that women are given adequate information before they choose which service to access.

- 5) For the reasons outlined above, the SMF would like to see a similar code of transparency applied to non-broadcast advertising of post-conception services.

#### 6) Question 92

**Given BCAP's policy consideration, do you agree that faith advertisements, which appeal for funds for charitable purposes that include or will be accompanied by recruitment or evangelism, are acceptable if that information is made clear in the advertisement? If your answer is no, please explain why.**

The SMF endorses the proposed TV and radio rule 15.11. Advertisements for appeals for funds for charities whose purpose includes or will be accompanied by recruitment or evangelism must be explicit in this regard. Many people would not choose to donate to a charity whose funds are used in this way.

Members of the SMF are concerned that some charities withhold their services from recipients unless they either accept the religious premise or agree to participate in some way with the religious objectives. Other charities are known to include proselytising information in charity packs aimed at children, for example. It would be unethical not to advertise their underlying purpose when appealing for funds or goods.

The SMF welcomes the proposed new transparency and the extension of the code to include radio advertising in addition to television advertising.

#### **7) Question 147**

**Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.**

The SMF endorses the proposal to relax the rules on the advertising of condoms as per paragraphs 32.25-32.27

The SMF notes that the Chair of the Government's Independent Advisory group (IAG) on Sexual Health and HIV, Baroness Gould of Potternewton, wrote to the BCAP in 2007 to request a review of the scheduling restrictions on condom advertising. She noted that the UK has the highest rate of teenage pregnancies in Europe and a spiralling rate of sexually transmitted infections. Alongside good quality sex and relationship education, condoms are vital in the prevention of sexually transmitted infections and unwanted pregnancies.

Also reported in the consultation document, a survey of young people has shown that they feel that television is one of the most effective ways of encouraging young people to use condoms. The normalisation of condoms in the media will help to increase their acceptability and remove the stigma that sometimes attaches to their use. The presence of condom advertising may provide opportunities for children to discuss sex and relationships with their parents or carers.

Yours Sincerely,

Dr Antony Lempert

Co-ordinator

Secular Medical Forum

Email: [antony@secularmedicalforum.org.uk](mailto:antony@secularmedicalforum.org.uk)

Dear Sir or Madam,

I am writing in response to the BCAP Code Review Consultation, which closes on 19 June, 2009. Specifically I am writing in response to Questions 55 and 56 of the consultation which cause me considerable concern both privately as a legitimate shooting enthusiast and publicly as the editor of a highly regarded national weekly magazine on the subject of shooting sports. I write to you both as a private individual and in my professional capacity and trust that my response will be treated accordingly.

I firmly believe that the BCAP Code in its present form fails to acknowledge the existence of shooting as a legitimate and beneficial activity in the UK, one which enjoys the regular support of hundreds of thousands of participants and which fosters the safe, responsible and legal use of firearms. The view adopted in the Code Review is that guns and shooting typically cause offence and are a bad thing per se. That view is at odds with the opinion of the hundreds of thousands of legitimate shooters in the UK which BCAP has overwhelmingly disregarded.

**Ref Question 55:**

Language such as this extract from your consultation document highlights the evident bias the Code takes against legitimate shooting sports: *"Although they are not, unlike real guns, intended to murder or maim, realistic replica guns can be used for criminal activity, such as for threatening people or using them to commit 'armed' robbery, and replicas can be converted into functioning weapons."*

Firstly "real" guns, such as shotguns, rifles and air rifles, are not designed to murder or maim but have entirely legitimate uses such as for pest control, clay pigeon shooting, game and target shooting. Your proposed revised rule at Section 10.71 fails to acknowledge that millions of guns are held legally in this country and that there are legitimate gun clubs, clay pigeon shooting grounds, firearm manufacturers and distributors which exist to service the needs of the UK's shooting community. All of these carry on their business legally and should be allowed to advertise, yet the BCAP Code lumps these respectable individuals in with prostitutes who are similarly banned from advertising their products and services. This is clearly unjust and I ask that you reconsider your disrespectful ban placed wholesale on members of the shooting community. The magazine I work for has been in existence for more than 125 years — legitimate shooting activity has been around in the UK for a lot longer. There is no reason whatsoever that it should be subject to such an indiscriminate ban.

Secondly, you state that replica firearms can be used for criminal activity. While my magazine is not involved in the replica firearm world, I would politely point out that Transit vans, baseball bats, ladies' stockings and bananas are also all items that are commonly associated with "armed" robbery and threatening people. While you may think my tone is flippant, hopefully you will appreciate how ludicrous legitimate shooters believe BCAP's simplistic attitude towards firearms to be.

**Ref Question Q56:**

While I welcome the proposal to extend the exception to allow references to clay pigeon shooting in television advertising as well as on radio, I disagree wholeheartedly with the principle behind what BCAP is proposing at Section 10.73. Clay pigeon shooting is itself a legitimate activity that is in no way a cause for public concern or offence, so should not be subject to any restrictions on broadcast advertising. Clay pigeon shooting events facilitate the raising of millions of pounds a year for charity and Britain's clay pigeon shooters have brought home gold medals from Olympic, Commonwealth and international competitions over many years. To deny clay pigeon shoot organisers the right to advertise their existence is unjust and in no way serves the public good.

You state that "an advertisement that had the sole focus of promoting guns, replica guns or a gun club could, BCAP considers, cause serious or widespread offence or condone the use of guns". I see no justification whatsoever for such an attitude. Indeed as a keen and responsible shooter, I condone the use of guns, believing that their use teaches responsibility, discipline and safety and instils maturity in young shooters. Enforcing a ban on advertising gun clubs, gun shops and clay pigeon shoots is itself responsible for causing offence among supporters of legitimate shooting. I refer you to the following comments from readers of my magazine:

*"The BCAP guidance to advertisers with regard to "guns and gun clubs" is sadly ill-informed, prejudiced and misguided. As a sport, activity and industry that has contributed so much and in so many ways, it seems unjust and plain wrong to restrict fair advertising of guns and guns clubs. Furthermore, by placing these restrictions upon a sport that is entirely legal, we are being compared to and governed by the same rules that apply to pornography, escort agencies and betting tipsters. Such an association is so illogical as to be almost funny, were it not for the fact that it represents a sad lack of understanding of shooting, the sport and those people who are respectfully and legally involved with it."*

*"It is crazy to lump guns and shooting clubs in the same category as prostitution."*

*"I think this consultation confirms how skewed some people's view of shooting is. This is why events such as National Shooting Week are vital, so that we can properly educate people about shooting and they will realise that putting shooters in the same pot as pornography is madness."*

## **Conclusion**

I believe BCAP should reconsider its ban on broadcast advertising of legitimate guns and gun-related activities. It is important to understand that in the UK guns do not simply equate to crime. There is a large constituency of legitimate firearm, shotgun and air rifle users, all of whom uphold the law and conduct themselves within its auspices. Your consultation fails to recognise this and starts from a highly simplistic "guns are bad" perspective which causes very real offence to those you marginalise.

Yours sincerely

Response from:  
Chris Hacking  
Output Development Manager  
Sit-up channels  
Sit-up studios  
Unit 11  
Acton Park Industrial Estate  
The Vale  
W37QE  
[Chris.hacking@sit-up.tv](mailto:Chris.hacking@sit-up.tv)  
07909 536505

BCAP Code Review  
June 16<sup>th</sup> 2009

Ref points 22.1 and 22.6 of BCAP code review

To whom it may concern

I am writing to ask for further clarification on two points of the proposed revisions to the BCAP code. The business I represent operates a number of transactional shopping channels and I would request further clarity on some points in the revised code.

Please see my queries below.

- 22.1
  - Requirement for adherence to the phone pay plus code of conduct
  - Please can you elaborate on what level of compliance is required in this area and if it is likely to have a direct impact on our live channel offering i.e. do we have to have to deliver any information on screen that ties in with requirements of the phone pay plus code of conduct.
- 22.6
  - Television advertisements for premium rate services must include a non premium rate telephone number for customer care purposes.
  - Our channels are a live broadcast offering. They are on air for 17 ¾ hours per day. Please can you specify how regularly this number would need to be displayed to ensure compliance under the newly proposed code?

Thanks in advance for your consideration of these points.

Best regards



Chris Hacking  
Output Development Manager



Broadcast Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London WC1V 6QT

19 June 2009

Dear Sirs,

Please find enclosed a submission from this Society in reference to the consultation on the review of the Broadcast code which closes today.

Yours faithfully

**Sent:** 05 June 2009 13:38

**To:** BCAPCodeReview

**Subject:** BCAP review

Dear Sir/madam,

I would like to respond to questions 55 & 56 below:

### Offensive weapons and replica guns

#### Question 55

Given its policy consideration, do you agree with BCAP's proposal to strengthen the present prohibition on TV advertisements for guns by prohibiting advertisements for offensive weapons and replica guns? If your answer is no, please explain why.

No, because I along with many thousands of other law abiding licensed holders enjoy the sport of shotgun shooting every week of the year, it is a disciplined sport open to all ages, sexes and disabled. I own and run a large shooting school and have thousands through a year, without the ability to advertise to people who have not been able to find contact details we would find it hard to promote the safe and exciting sport to new comers. We run many corporate days where companies can reward their customers and staff this also relies on the ability to advertise freely in what I thought was a "free country"?

#### Question 56

Given its policy consideration, do you agree with BCAP's proposal to extend the present radio exception to the rule for references to clay pigeon shoots in advertisements only if they are promoted as part of a wider range of outdoor pursuits? If your answer is no, please explain why.

No, because of the reasons stated above and because a large amount of money is raised yearly for many charities which would not be possible without the ability to advertise correctly.

This all amounts to a "Big Brother State" and loses:

Olympic medals

World wide recognition as leaders in the sport

World titles

Greater understanding and discipline regarding guns

A great sport

Revenue, both for my business and the country

Rev Mark Stocker  
Spring Road Evangelical Church  
61 Millais Road  
Southampton  
SO19 2FX  
  
m\_stocker@onetel.com

## **BCAP Consultation on Advertising – especially Abortion & Condom Ads**

### *Abortion Advertising*

We are not happy with Abortion advertisements being shown on TV. We feel strongly that Abortion is a sensitive issue which must be explained to children carefully and in a sensitive way. If allowed, such advertising will make it much harder for parents to decide upon and control how their children learn of Abortion. One can imagine an advert coming on and children turning to their parents and asking “What’s Abortion?” It may be that the parents feel it is not something they as yet want to explain to their children, but are now under pressure to do so.

We believe that open advertising will increase the amount of people having abortions. Any abortion is a sad and serious step for any mother and is really to be regretted.

We believe that, those advertising for abortions should be compelled to state that they do not offer counselling if a woman decides to keep the baby.

### *Condom Advertising*

We strongly feel that the philosophy that condom advertising will reduce unwanted pregnancies has been shown to be utterly flawed. This approach has been followed for years and yet unwanted or under-age pregnancy rates are soaring. Greater condom advertising will just compound this. It will also give more of an impression to younger children and teenagers, that they are expected to be sexually active.

Again we are not happy with condom advertisements being shown on TV. It will be much harder for parents to decide upon and control how their children learn of birth control. Even now with the nine o’clock watershed for condom advertising, our young children have been exposed to these adverts without us wanting them to be.

BCAP Code Review

Code Policy Team

Broadcast Committee of Advertising Practice

Mid City Place

71 High Holborn

London

WC1V 6QT

**June 17<sup>th</sup> 2009**

[BCAPcodereview@cap.org.uk](mailto:BCAPcodereview@cap.org.uk)

## ***BCAP Code Review***

**Consultation on the proposed BCAP**

**Broadcast Advertising Standards Code**

**Submission from**

**Square1 Communications Ltd**

...is one of the UK's largest telecommunications Network reseller and Service Provider specialising in the provision of interactive services within the Telemedia industry. We provide billing and technology solutions used for web, print and also interactive services for many of latest TV formats that have had such huge success in recent years.

We have been providing PRS services for almost seven years and have been involved with Interactive TV services for over 5 years providing both Mobile and fixed line solutions for our clients.

Please find below our answers to specific questions in the consultation and also comments on other specific points that we feel have an impact on the interactive TV sector and our business.

BCAP Code Review  
Code Policy Team  
Broadcast Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

**June 17<sup>th</sup> 2009**

[BCAPcodereview@cap.org.uk](mailto:BCAPcodereview@cap.org.uk)

## ***BCAP Code Review***

**Consultation on the proposed BCAP**

**Broadcast Advertising Standards Code**

**Submission from**

**Square1 Communications Ltd**

**About Square1 ( [www.sq1.co.uk](http://www.sq1.co.uk) )**

Square1 Communications Ltd is one of the UK's largest telecommunications Network reseller and Service Provider specialising in the provision of interactive services within the Telemedia industry. We provide billing and technology solutions used for web, print and also interactive services for many of latest TV formats that have had such huge success in recent years.

We have been providing PRS services for almost seven years and have been involved with Interactive TV services for over 5 years providing both Mobile and fixed line solutions for our clients.

Please find below our answers to specific questions in the consultation and also comments on other specific points that we feel have an impact on the interactive TV sector and our business.

Square1 welcomes the opportunity to respond to a review of the existing BCAP Broadcast Advertising Standards Codes to ensure the rules for broadcast advertisements are up to date with current TV formats and fit for purpose together with proposals for a new, single BCAP Broadcast Advertising Standards Code administered by the Advertising Standards Authority (ASA).

### Summary

*Square1 supports the need for consumers to be fully informed which includes the clear separation of editorial and advertising content. However, AIME our trade association is still in the process of Consultation with Ofcom on options as to how this is best achieved for interactive television programming that is a format that currently seems not to be recognized by regulators at this time.*

*We feel that BCAP finds itself in the difficult position of being required by Ofcom to attempt to apply its Code to a modern genre of interactive television services for which it was never designed under the guise of Teleshopping. Also, through no fault of its own, in pursuing the possible Ofcom requirement to regulate currently lawful and popular interactive television under the Teleshopping category many programmes will become untenable and cease to trade with resultant and very serious losses in revenues and employment.*

*Ofcom's current proposals to designate some interactive television programming as Teleshopping are not finalised and are the subject of an ongoing and incomplete Consultations. For this reason Square1 would request that any BCAP regulatory action in the interactive television space, including requirements for the introduction of encryption for some advertising and programming, to be deferred until the current Ofcom Consultation process is completed.*

*In line with AIME, Square1 would like to see more of a core code stating clear principles supported by flexible Help Notes or Guidelines which can be amended at will without long and costly Consultations.*

*Square1 feels there would be benefit from closer co-operation between BCAP and AIME.*



## **1. General**

*We agree with AIME on this point.*

*We are supportive of the need to apply sensible standards to advertising but also take the view that it is of paramount importance that regulation itself should abide by best regulation principles and standards to avoid creating impediments to legitimate and responsible business and associated advertising. For this reason we are pleased to note the statement that BCAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so they are easily understood, easily implemented and easily enforced and retain an environment in which responsible broadcast advertising can flourish.*

*As digital media converge and multi media advertising becomes more prevalent AIME believes it is important to have consistency in the setting and application of standards for all advertising in a media neutral manner. Only in this way will we avoid confusion between various media standards and the unnecessary duplication of effort and cost between regulatory agencies addressing what they perceive to be special circumstances. Services utilising Premium Telephony billing is an example of this where additional advertising Code to CAP and BCAP is detailed within the PhonepayPlus Code of Practice. There is also a declared intent for the separate Codes to apply separate adjudications and sanctions for common Code infringements and AIME believes this to be both undesirable and unnecessary.*

*It is also very clear that Ofcom considerations (as yet the subject of incomplete Consultations) to redefine certain interactive television programmes as Teleshopping and therefore liable to regulation under BCAP do not fit well within the traditional CAP and BCAP regulatory scene. Given that the base BCAP regulation was inherited from an era before the genre of interactive television emerged to achieve today's huge popularity in its number of both viewers and also participants this is not surprising.*

*Square1 strongly feels that the BCAP Code could be reviewed to consider how it might accommodate this new genre of interactive programmes and better reflect the constantly changing nature and attitudes of society. Alternatively, this rapidly developing service genre might be regulated elsewhere. This would of course be outside the scope of this BCAP Consultation and we would expect BCAP, via Ofcom, to defer any proposed changes at least until the current Ofcom Consultation exercise is completed.*

*As a step towards the sensible rationalisation of Codes Square1 welcomes the proposal to replace the current Codes with a single, user-friendly Code covering TV and radio advertisements for the benefit of the public and the broadcast advertising industry.*

*We note that item 3.iii (f) of the Consultation document states with regard to the BCAP Code's standard objectives "that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material; ...." And we wonder if this is in error as the BCAP Code is understood to apply exclusively to advertising and not to broadcast programme content, (with the exception of teleshopping which is defined as advertising) which, we believe, remains within the direct remit of Ofcom.*

## **2. Questions**

Due to the scale of this Consultation Square1 will confine its responses to questions that best match its areas of particular interest and in some we will show agreement with AIME.

### **Part 2.1 - Compliance**

BCAP considers a social responsibility rule is in keeping with its general policy objectives and, both in its expression in the Code and in its application will prevent irresponsible broadcast advertisements. BCAP proposes to introduce:

1.2 Advertisements must be prepared with a sense of responsibility to the audience and to society.

Question 1

*Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code?*

Answer 1

*Agreed*

Question 2

No comment.

### **Part 2.2 – Recognition of Advertising**

Audiovisual Media Services (AVMS) Directive

AVMS revises and updates the Television Without Frontiers (TVWF) Directive, which has regulated television broadcasting in the EU since 1989. The TVWF Directive applied to scheduled television broadcasting services only. AVMS also applies to some on-demand services but this consultation is about advertisements in scheduled broadcast services only. Article 10 of TVWF has been revised in AVMS to state:

- Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.
- Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Question 3

*Given BCAP's policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code?*

2.1

Advertisements must be clearly distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.

Answer 3

*Square1 agrees that advertising content should be readily distinct from editorial and there is / will be a variety of ways in which this can be achieved.*

*Research shows that viewers are already instinctively able to differentiate traditional TV from advertising and that the UK public is significantly more media literate than when the present Codes were last revised.*

*Given that research already shows that viewers are instinctively able to differentiate traditional TV from advertising is it necessary to point this out to the viewer?*

Question 4

No comment

Question 5

*Given BCAP's policy consideration, do you agree that present TV rule 2.2.1 should not be included in the proposed BCAP Code?*

*ii) Given BCAP's policy consideration, do you agree that present TV rule 2.2.2 (a) should not be included in the proposed BCAP Code?*

2.2.1

Broadcasters must retain editorial independence and responsibility for the content and scheduling of programmes.

2.2.2

Advertisements must not refer to the use or appearance of any service or product in any programme.

Answer 5

***We agree that 2.2.1 and 2.2.2 should be deleted.***

Question 6

No comment

Question 7

*Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable?*

Answer 7

***Square1 agrees with AIME on this point:-***

AIME believes BCAP rules on recognition of advertising (separation of advertising from editorial) to be necessary and reflect the AVMS Directive that audiovisual commercial communications shall easily be recognizable as such. We believe BCAP has taken a reasonable approach which reflects significant improvements in public media literacy over the years.

### **Part 2.3 – Misleading**

The Communications Act 2003 sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The standards objectives most relevant to the Misleading Section of the BCAP Code are:

319 (2) (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;

319 (2) (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

Question 8

*Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code?*

3.4

Obvious exaggerations (“puffery”) and claims that the audience is unlikely to take literally are allowed provided they do not affect the accuracy or perception of the advertisement in a material way.

3.5

Subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims.

Answer 8

**Square1 agrees with AIME on this point:-**

***Agreed, with the proviso that these examples fall within the comment made for questions 9 – 23.***

Question 9 – 23

***These are all prescriptive examples of circumstances that would be interpreted as misleading the public and should therefore reside in Help Notes or Guidelines.***

Answers 9 – 23

***Rather than attempt to prescribe examples for every possible circumstance it would be more effective to state that advertising must not intentionally or unintentionally mislead the public and that BCAP’s decisions will be final. Possible examples should be located in Help Notes or Guidelines and not in the basic Code.***

**Part 2.4 – Harm and Offence**

The proposed Code, and the present BCAP Codes, enshrine in rules some of the legal requirements of the Communications Act and Broadcasting Acts. Those rules make clear the general, overarching principle that advertisements must not harm or cause serious or

widespread offence to the audience, for example, by offending against generally accepted moral, social or cultural standards. That principle has been, and should continue to be, applicable to all broadcasters and advertisers to ensure that generally accepted standards in broadcast advertising are upheld.

BCAP is aware that its duty to protect the audience from the inclusion of harmful or offensive material in advertising must be balanced with advertisers' fundamental right to freedom of expression. BCAP considers it reasonable to restrict that right if it is necessary to protect the audience from harm or serious or widespread offence.

Question 24

BCAP proposes to reflect provision in its Code to compliment the general principle that advertisements must not include harmful material. BCAP proposes:

4.7

Advertisements must not condone or encourage violence, crime, disorder or anti-social behavior.

*Do you agree that rule 4.7 should be included in the proposed BCAP Code?*

Answer 24

***Agreed, however we feel some clarification should be given to each area. Is the advertising of some popular car theft computer games seen as encouraging violence or anti social behaviour?***

Questions 25 –27

No Comment

## Part 2.5 Children

AVMS Directive states:

Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

### Question 28

*Given BCAP's policy consideration, do you agree that rule 5.7 should be included in the Code?*

5.7

Advertisements must not exploit the special trust children place in parents, guardians, teachers or other persons.

### Answer 28

***While we agree with the sentiment of the proposed rule, the wording is unnecessarily prescriptive regarding parents etc. when it closes with "other persons". It could be more realistic to adopt a more generic approach e.g. "Advertisements must not exploit the special relationships that children enjoy with adults and from whom they would expect the protection of care and trust."***

### Questions 29 – 34

No additional comments.

## Part 2.6 – Privacy

### Questions 35 – 36

No comments



## **Part 2.7 – Political and Controversial Issues**

Question 37

No comments

## **Part 2.8 – Distance Selling**

Distance selling advertisements, like all other business-to-consumer advertisements, must comply with the CPRs. The CPRs forbid advertisers from using misleading, aggressive or unfair sales techniques, which are defined in the Regulations, and specifically prohibits certain practices that are deemed to be unfair in all circumstances. AIME notes and supports BCAP intent to place accountability for consumer protection closer to the point of sale, in this instance the Broadcasters, by making broadcasters responsible for the conduct of their advertisers.

Questions 38 – 44

No additional comments

## **Part 2.9 – Environmental Claims**

Questions 45 – 47

No comments

## **Part 2.10 – Prohibited Categories**

Question 48

No comments

Question 49

On balance, and in line with its general policy objectives, BCAP proposes to relax the ban on broadcast advertisements for betting tips and to include dedicated new content and scheduling rules with the objective that persons under the age of 18 and the vulnerable are protected, and that misleading and irresponsible claims in betting tipster advertisements are prevented. The proposed rules have been distilled from the TV Text Guidance Note, which has been long-established and has successfully regulated TV text and interactive TV advertisements for betting tipsters; BCAP is unaware of any complaints to the ASA about those advertisements. BCAP considers the new rules provide an adequate level of protection for the audience.

BCAP proposes to replace the ban on television and radio advertisements for betting tips with ~~the following~~ rules **21.1 – 21.14**.

*i) Given BCAP's policy consideration, do you agree that the ban on TV and radio advertisements for betting tips should be relaxed?*

*ii) Given BCAP's specific policy objectives to protect under 18s and the vulnerable and to prevent misleading and irresponsible claims in betting tipster advertisements, do you agree that BCAP's proposed rules are necessary and easily understood?*

Answer 49

***We agree with the proposal to remove the ban but believes the rules should be less prescriptive with more use made of Help Notes or Guidelines.***

Question 50 – 51

No comment

Question 52

BCAP proposes to replace the present TV prohibition on commercial services offering individual advice on consumer or personal problems and instead assimilate, in a new rule, the protection afforded by the present radio rule on consumer advice services. BCAP intends that the proposed rule would achieve the policy objective of providing an adequate level of protection for the consumer and to those services whose reputations are placed at risk by rogue traders within the sector. To that end, BCAP proposes to broaden the rule (26.2) to cover all services offering individual advice on consumer or personal problems and not just commercial services:

**26.2** Services offering individual advice on consumer or personal problems may be advertised only if those advertisers have given the broadcaster evidence of suitable and relevant credentials: for example, affiliation to a body that has systems for dealing with complaints and for taking disciplinary action; systems in place for regular review of members' skills and competencies; registration based on minimum standards for training and qualifications; and suitable professional indemnity insurance covering the services provided.

*i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for commercial services offering individual advice on consumer or personal problems should be relaxed?*

*ii) Given BCAP's specific policy objectives, do you agree that BCAP's proposed rule 26.2 is necessary and easily understood?*

Answer 52

***We agree that this ban should be relaxed and supports rule 26.2***

Question 53

No comment

Question 54

On balance, BCAP considers that the TV ban on advertisements for pornography products is disproportionate; an outright ban is not required by law or necessary, given broadcast encryption technology. BCAP proposes to relax the ban to allow advertisements for pornography products to be broadcast on encrypted elements of adult entertainment channels only. BCAP's proposal avoids the likelihood of children and adults who might be seriously offended by advertisements for pornography from being in the viewing audience.

BCAP considers that audience members who have signed up for encrypted adult entertainment channels are unlikely to be offended by advertisements for pornography products and are unlikely to object to receiving information about such products. BCAP considers, however, it is important to ensure the content of an advertisement for a pornography product is in keeping with, and no more explicit than, surrounding programme material.

BCAP proposes to prohibit the broadcast of R18-rated material or equivalent in the content of advertisements. It does not propose to ban advertisements for R18-rated material (as classified by the BBFC) or its equivalent: those would, under BCAP's proposal, be allowed behind encryption.

On that basis, BCAP proposes these rules, which would impose on advertisements requirements similar to those in the Ofcom Broadcasting Code:

30.3 – Television only

Advertisements must not feature R18-rated material (as classified by the British Board of Film Classification) or its equivalent. That does not preclude advertisements for R18-rated material or its equivalent.

30.4 – Television only

Advertisements must not feature adult-sex material before 10 pm or after 5.30 am.

i) *Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only?*

ii) *Given its specific policy objective, do you agree that BCAP's proposed rules are necessary and easily understood?*

iii) *Given BCAP's policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18-rated material or its equivalent?*

Answer 54

***Square1 strongly feels that the access to adult, and in-fact any channel on SKY and FREEVIEW is already adequately controlled by a variety of methods as listed below and that any requirement to employ further and additional encryption technology to be unnecessary, disproportionate and costly.***

- ***PIN (parental control)- available on SKY &FREEVIEW***
- ***Subscription***
- ***Mobile Age Verification***
- ***090 call blocking***
- ***Watershed timing***
- ***EPG position within specific platforms***

***Square1 believes the protection offered by Parental Control services and other forms of access control to specialist channels to be adequate, equivalent and preferable to further channel encryption and would like to see the Code clarifying this point. Since adult programming and advertising are already subject to restricted access there appears to be no need to address advertising content separately. Any insistence that programming of an adult nature be placed behind further encryption technology (such as a dedicated channel on a***

*satellite service) would be commercially beneficial to such a service and could be interpreted as commercially restrictive or unfair.*

*We would also suggest that variants of the word pornography, which has evolved since this Code was last reviewed to become an emotive expression closely linked with unacceptable obscenity, be replaced with the word glamour or a similar term which will be more socially acceptable and covers areas beyond pure sexual content. It is our view that, with a vast range of already sufficient access controls in place, advertising for programmes of an adult nature should be available on appropriate channels and, in context with the programming, after the Watershed.*

Questions 55 – 58

No further comments

#### **Part 2.11 – Medicines, Medical Devices, Treatment and Health**

Questions 59 – 67

No comments

#### **Part 2.12 – Weight Control and Slimming**

Questions 68 – 77

No comments

#### **Part 2.13 - Food, Dietary Supplements and Associated Health and Nutrition Claims**

Questions 78 – 87

No comments

#### **Part 2.14 - Financial products, services and investments**

Questions 88 – 89

No comments

#### **Part 2.15 - Faith, Religion and Equivalent Systems of Belief**

Questions 90 – 96

No comments

Question 97 (psychic PRS)

Later this year, Ofcom will consult on the use of premium-rate telephone services (PRS) in programmes with reference to Section 10 (Commercial References and Other Matters) of its Broadcasting Code, specifically to ensure that advertising is kept separate from programme content ('editorial content') in accordance with European broadcasting legislation and UK regulation. That consultation is of particular significance to a growing number of programmes that are predicated on the use of PRS, including programmes that invite the audience to call to speak to psychics or others who provide services that would be regarded, in the terms of the proposed Code, as 'occult or psychic' services. For the purposes of this consultation, these services are referred to as 'psychic PRS'.

Ofcom might, after consultation, include new rules in Section 10 of the Broadcasting Code and/or issue guidance to make clearer the extent to which PRS is permissible in programme content, in line with Ofcom's legal and regulatory obligations. Ofcom might conclude, on a case-by-case basis, that particular content predicated on PRS, including psychic PRS, does not comply with its Broadcasting Code, in its current form, or as amended. Broadcasters would then need to consider whether to adjust their format or broadcasting model to bring their services into compliance with the Broadcasting Code or operate as advertising (teleshopping). Teleshopping must comply with the relevant BCAP Code. At present, the BCAP Television Code bans advertisements for products that rely on belief in psychic or occult phenomena. It exempts three types of product from that prohibition: pre-recorded tarot services, publications that discuss tarot without recommending it and services that readers are likely to regard as entertainment and that offer advice that would obviously apply to large sections of the population (such as newspaper horoscopes).

*i) Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices?*

*ii) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Faith, Religion and Equivalent Systems of Belief are necessary and easily understandable?*

Answer 97

***BCAP appears to justify its intent to maintain a ban on advertising for "psychic PRS" by considering the acceptability of the service content, which lies outside of the BCAP remit and is already subject to regulation by Ofcom and PhonpayPlus. This is a very popular service genre with a very low record of consumer complaint and Square1 takes the same view as AIME on this issue, that BCAP should await the outcome of the Ofcom Consultation on editorial content before taking a position on this.***

Question 98

No comment

### **Part 2.16 – Charities**

Questions 99 – 104

No comments

### **Part 2.17 – Gambling**

Questions 105 – 110

No comments other than to note the existence of the Gambling Commission which shares responsibility for gambling advertising with Ofcom.

### **Part 2.18 – Lotteries**

Included under Part 2.17 – Gambling

### **Part 2.19 – Alcohol**

Questions 111 - 118

No comments

### **Part 2.20 – Motoring**

Questions 119- 121

No comments

### **Part 2.21 – Betting Tipsters**

Included under Part 2.17 – Gambling

### **Part 2.22 – Premium Rate Services**

#### **PhonepayPlus Code**

TV and radio broadcasters are required, by the terms of their Ofcom license, to ensure advertisements they broadcast that promote premium-rate services (PRS) comply with the PhonepayPlus Code of Practice. The price and nature of premium-rate telephone services must be made clear and Advertisements that include premium-rate telephone numbers or short codes should comply with the PhonepayPlus Code of Practice.

BCAP rules are intended to protect audiences from potentially misleading, offensive or harmful advertisements and, in line with broadcasters' Ofcom license requirement, to secure compliance with the PhonepayPlus Code of Practice. BCAP seeks to maintain that approach in the proposed BCAP Code with the following proposed additions:

22.1

Advertisements that include a premium-rate telephone number must comply with the PhonepayPlus Code of Practice.

22.2

Advertisements for premium-rate telephone services must include clear pricing information if the service generally costs 50 pence per call or more.

22.3

Advertisements for premium-rate children's services, services accessed by automated equipment or subscription services must always include clear pricing information.

22.4

Advertisements for premium-rate services must state the identity of the service provider or the information provider.

22.5 – Radio

If it is not included in the advertisement, radio broadcasters must retain and, on request, make available a non-premium-rate telephone number for the premium-rate service for customer care purposes.

22.6 – Television

Television advertisements for premium-rate services must include a non-premium-rate telephone number for customer care purposes.

22.8

Advertisements for live premium-rate services must not appeal particularly to people under 18, unless those services have received prior permission from PhonepayPlus to target people under 18.

BCAP considers the inclusion of these rules would not increase the regulatory burden for television or radio.

Question 122

*Given BCAP's policy consideration, do you agree that proposed rules 22.1 to 22.6 and 22.8 should be included in the proposed BCAP Code?*

Answer 122

***Rather than repeat and duplicate elements of the PhonepayPlus Code and other relevant codes and or guidelines, it should be sufficient to state, as with 22.1 that advertisements that include premium-rate telephone numbers or short codes should comply with the PhonepayPlus Code of Practice.***

## **Radio**

To provide consistent standards for the benefit of consumers and the radio industry, the present Radio Code and the proposed BCAP Code require some categories of radio advertisements to be centrally cleared by the RACC. Those



categories of radio advertisements have a clear potential to mislead, offend or harm. On that basis BCAP proposes to include a new rule for radio:

23.1 – Radio

Advertisements for telecommunications-based sexual entertainment services must be centrally cleared.

Question 123

*Given BCAP's policy consideration, do you agree that proposed rule 23.1 should be included in the proposed BCAP Code?*

Answer 123

*Agreed*

**Television advertisements for PRS of a sexual nature**

BCAP believes that the existing policy on TV advertisements for PRS of a sexual nature should be retained. As part of its forthcoming consultation, Ofcom intends to conduct viewer and consumer research on PRS-based TV services. That research and consultation will inform Ofcom's decisions on possible changes to both the Ofcom Broadcasting Code and, potentially, to the BCAP Code, for which Ofcom has responsibility for final approval. The current Broadcasting Code requirement is that programmes must not show adult-sex material unless it is broadcast behind a mandatory PIN-protected encryption system between 10pm and 5.30am.

BCAP proposes that the present policy on TV advertisements for PRS of a sexual nature should be maintained, subject to possible change following BCAP's and Ofcom's consultations and decisions by Ofcom.

Question 124

*Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only?*

Answer 124

*As shown in answer 54 there already exist a number of access control methods for content of an adult nature and the specified requirement for encryption is unnecessary, disproportionate and costly. The reference to "PIN Protected encryption" is also confusing since PIN and encryption represent two different technologies with PIN protection being the most widely accepted, understood and effective method of access control (PARENTAL CONTROL functions on both Sky and Freeview)*

We are also very concerned that much of the information provided to BCAP by Ofcom is either inaccurate or that BCAP have failed to accurately present that information.

In support of this we refer to paragraph 22.43 of the consultation which states “Between February 2006 and February 2009, Ofcom received around 200 complaints about Participation TV services” including complaints about “drunken female presenters”.

Ofcom have confirmed that “the actual figure was in fact only 153 complaints, almost **25% less** than the figure cited by BCAP.

Of the 153 complaints, only 27 resulted in a finding of breach of the Ofcom Broadcasting Code of which sex / nudity comprised 24, use of premium rate numbers only 1, inaccuracy/misleading 1 and scheduling 1.

Of the 27 breaches, 4 were for a breach of Licence Condition 11 – Failure to Supply a Recording (***i.e. not relating to the content of the broadcast***).

There was only one complaint concerning “*drunken female presenters*”. This one complaint **did not result in breach** of the Ofcom Code. **Accordingly, there have been no Ofcom reports regarding “drunken female presenters”.**

The failure to accurately present key information is simply unacceptable in any consultation.

Astonishingly the information presented by BCAP in paragraph 22.43 is neither accurate nor is it fairly presented.

We feel that this example casts considerable doubt on the veracity of all “evidence” presented by BCAP in the consultation document, unless BCAP are able to unequivocally confirm that they took all reasonable steps to independently verify the accuracy of the information on which they have relied in support of their policy proposals and that having done so they believe the presentation of that information in the consultation document has been both fair and transparent.

If members of the public and business community cannot rely on the accuracy and fairness of information used in the consultation document, it must be the case that the entire consultation process is fatally flawed.

We would submit that it is critically important that any consultation satisfies the five principles of good regulation identified by the UK Government’s Department of Business Innovation as the “cornerstone” of better regulation, namely that any regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted – only at cases where action is needed.

We strongly feel that this consultation fails on many of the above principles.

## Payment Mechanisms

For historic reasons the present BCAP rules specify premium-rate as the method of payment for telephone sexual entertainment services. BCAP's review of the rule makes clear that the present restriction on TV advertisements for those services is intended to prevent serious or widespread offence and protect children from potential harm. The restriction takes account of the wholly adult nature of the service and the potential for advertisements, particularly live broadcast material predicated on the use of telephone sexual entertainment services, to go beyond generally accepted standards on unencrypted TV channels. The method of payment is not therefore relevant to restricting those advertisements to encrypted elements of adult entertainment channels.

### Question 125

*i) Given BCAP's policy consideration, do you agree that the BCAP rule on PRS of a sexual nature should be clarified to make clear that it applies also to TV advertisements for telecommunications-based sexual entertainment services made available to consumers via a direct-response mechanism and delivered over electronic communication networks?*

*ii) If your answer is no to question 125 (i), do you consider the rule should make clear that 'premium-rate call charge' is the only permissible form of payment?*

### Answer 125

***Square agrees with AIME on this point:-***

- i) It should be sufficient to refer to "TV advertisements for telecommunication based sexual entertainment services" and the reference to direct response mechanism and delivery method is not understood.*
- ii) Having established that the method of payment has no relevance to advertisements it is not acceptable to restrict the consumers options of payment methods. There is no reason for BCAP to become involved with this issue which is outside of BCAP remit.*

## New Code Section

In line with this proposal BCAP proposes to create a new section in the proposed BCAP Code, entitled Telecommunications-Based Sexual Entertainment Services. Advertisements for PRS of a sexual nature would continue to be required to comply with the rules in the Premium-Rate Services

section of the proposed BCAP Television Code, as well as the rules in the Telecommunications-Based Sexual Entertainment Services section.

**Square1 agrees with the AIME view on this Point.**

*We believe there is potential here for confusion from duplication of requirements contained in the PhoneyPlus Code of Practice and recommends this proposal be reconsidered.*

## **Dialing Codes**

The present TV rule defines PRS of a sexual nature as those that operate on the 0909 dialing Code only. Today, those services may operate on 0908, 0909 or 098 number ranges and on mobile short code numbers beginning 69 or 89. Those number ranges are designated for the purpose of premium-rate sexual entertainment services by Ofcom. On balance, BCAP proposes not to reference number ranges either as examples of, or as a means of defining, PRS of a sexual nature.

### Question 126

*Given BCAP's policy consideration, do you agree that BCAP's rule should not define PRS of a sexual nature as those operating on number ranges designated by Ofcom for those services?*

### Answer 126

***Agreed***

## **Types of PRS services of a sexual nature**

The present rule refers to 'voice services of a sexual nature'. BCAP considers it reasonable to assume that, when the rule was last reviewed, voice services (live or recorded) comprised the vast majority of telecommunications-based sexual entertainment services made available to the public. Today, telecommunications-based sexual entertainment services include voice, text, image or video content services. BCAP proposes to reflect the custom and practice of interpreting the present rule by making clear that telecommunications-based sexual entertainment services are 'voice, text, image or video services of a sexual nature'.

### Question 127

*Given BCAP's policy consideration, do you agree that BCAP's rule on TV advertisements for telecommunications-based sexual entertainment services should extend to 'voice, text, image or video services of a sexual nature'?*

### Answer 127

***We feel that BCAP should not attempt to quantify all possible options for service delivery, it should be sufficient to simply refer to "entertainment services of a sexual nature".***

BCAP considers that, by restricting TV advertisements for telecommunications-based sexual entertainment services to encrypted elements of adult entertainment channels, the proposed rule prevents the potential for serious or widespread offence. It also, on a precautionary principle, protects children from seeing material that goes beyond generally accepted standards on unencrypted

channels and prevents children from responding to TV advertisements for services intended for a strictly adult audience and potentially accessing those services.

Question 128

*Given BCAP's policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2?*

23.1 – Television (*assumed actually 23.2*)

Advertisements for telecommunications-based sexual entertainment services are acceptable on encrypted elements of adult entertainment channels only.

Answer 128

*Please see answers 54 and 124. Adverts of this type shown after the watershed on specific channels that already have sufficient access control mechanisms should be acceptable.*

### **Telecommunications-based live chatline services**

The present BCAP Codes do not include a rule on TV advertisements for live chatline services. The vast majority of those are offered in return for payment by premium-rate call charge and, therefore, advertisements for them must comply with rules in the Premium-Rate Services section and the general rules of the present Codes and the proposed BCAP Code.

If the new BCAP Code allowed TV advertisements for telecommunications-based sexual entertainment services on encrypted elements of adult entertainment channels only, BCAP will undertake, in discussion with PhonepayPlus, to monitor closely the content of unencrypted advertisements for live chatline services and the content of those services. BCAP and the ASA would not allow a rule that confined advertisements for telecommunications-based sexual entertainment services to encrypted elements of adult entertainment to be circumvented by unencrypted advertisements for live chatline services that, in breach of the BCAP Code and the PhonepayPlus Code, promoted those services as being sexual in nature or that operated as sexual entertainment services.

### **Overall PRS**

Question 129

*i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Premium-Rate Services section, are necessary and easily understandable?*

*ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Premium-Rate Services rules that you consider 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?*

Answer 129

*As already stated this subject is adequately covered by the existing PhonepayPlus Code of Practice.*

#### **Part 2.23 - Telecommunications-Based Sexual Entertainment Services**

*This subject is adequately covered by the existing PhonepayPlus Code of Practice. The reference to Betting Tipster Advertising under this heading is not understood.*

#### **Part 2.24 – Homeworking Schemes**

Questions 130 - 131

No comment

#### **Part 2.25 – Instructional Courses**

Questions 132 – 134

No comment

#### **Part 2.26 - Services Offering Individual Advice on Consumer or Personal Problems**

Included under section 2.10 – Prohibited Categories

#### **Part 2.27 – Introduction and Dating Services**

Advertisements are currently acceptable, subject to Rule 10.1.5. Services operating through premium-rate telephone and text services are subject to Section 22 (Premium-rate Section) and the PhonepayPlus Code.

#### **Precautions when meeting people**

BCAP's proposed TV and radio rule is:

27.4

Broadcasters must satisfy themselves that advertisers give customers clear advice on precautions to take when meeting people through an advertisement for an introduction or dating agency.

Question 135

*Given BCAP's policy consideration, do you agree that rule 27.4 should be included in the proposed BCAP Code?*

Answer 135

*Agreed*



## **Data Protection**

BCAP requires the broadcaster to obtain an assurance that the advertiser complies with the requirements of Data Protection Act. BCAP considers that is an obligation placed on all organisations who obtain, store, or process personal data and, therefore, it is not, in BCAP's opinion, necessary to require the broadcaster to obtain an assurance from the advertiser to that end. However, BCAP proposes to include a cross-reference the Data Protection Act 1998 in this Section.

### **Question 136**

*Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request?*

### **Answer 136**

*Agreed*

## **Promiscuity**

### **Question 137**

*Given BCAP's policy consideration, do you agree the proposed BCAP Code provides adequate protection from the potential for harm or offence from advertisements that encourage or condone promiscuity?*

### **Answer 137**

*Agreed*

## **Misleading**

BCAP considers this is adequately regulated by rules in the Misleading section of the proposed BCAP Code. BCAP therefore proposes to delete current radio rules (3.14(a) and (d) but, because it considers it to be a common claim in advertisements for introduction and dating services, to retain the requirement that, 'Advertisements must not imply a greater degree of matching of individual clients according to suitability than is achieved.'

### **Question 138**

*Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rules 3.14 (a) and (d) into the proposed BCAP Code?*

### **Answer 138**

*Agreed*

## **Location or Telephone Number**

BCAP considers the business models on which introduction and dating services are based means that most, if not all advertisements in this sector, include a

telephone number or website address that include relevant contact details and locations for clients to visit.

Question 139

*Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rule 3.14 (b) into the proposed BCAP Code?*

Answer 139

*Agreed*

Question 140

*No further comments*

## **Part 2.28 – Competitions**

BCAP's proposed TV and radio rule is:

28.1

Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.

Question 141

*i) Given BCAP's policy consideration, do you agree that rule 28.1 should be included in BCAP's new Code?*

Answer 141

*Agreed*

## **Part 2.29 – Private Investigation Agencies**

Included under section 2.10 – Prohibited Categories

## **Part 2.30 - Pornography**

Included under section 2.10 – Prohibited Categories

## **Part 2.31 - Other Categories of Radio Advertisements that Require Central Copy Clearance**

Question 142

No comments

## **Part 2.32 – Scheduling**

Question 143 – 144

No comments

## **Live Premium Rate Services**

BCAP's Codes do not explicitly address the subject of live premium-rate services; Section 22 Premium-rate Services requires broadcasters to comply with the PhonepayPlus Code, which includes rules for live premium-rate services. BCAP recognises that such services have proliferated on TV and radio and therefore proposes to introduce a scheduling requirement that television and radio advertisements for such services may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18, unless those services have received prior permission from PhonepayPlus to target people under 18.

Question 145

*Given BCAP's policy consideration, do you agree that proposed rules 32.2.6 and 32.20.8 should be included in the proposed BCAP Code?*

Answer 145

**Square1 agrees with AIME on this:-**

*Square1 generally agrees with these rules which reflect the requirements of the PhonepayPlus Code with the exception of the restrictions suggested on higher rate Premium tariffs. If tariffs are approved by Ofcom it is not considered within BCAP's remit to restrict their use.*

Questions 146 – 157

*No comments*

## Conclusion

*Despite our serious concerns over Ofcom's proposals to designate current and popular interactive television formats as Teleshopping and the obvious unsuitability of the BCAP Code to cope with these, Square1 would like to see closer future co-operation between BCAP and AIME, we feel this would better reflect the activities of AIME members and provide BCAP with additional insight and assistance in these markets.*

*This is a rapidly changing and converging service environment that calls for an informed approach to fair and proportional regulation while preserving the consumer's right to freedom of choice.*

**Square1 agrees with AIME on the following statement:-**

*BCAP has a clear priority, shared by Square1 and AIME, that consumers are fully informed and properly protected from inappropriate content and it is appreciated that the BCAP Code has made significant efforts to limit interference in legitimate commerce. However, we feel that the current Code, even modified by this Consultation, is too prescriptive and BCAP would benefit from confining the actual Code to core principles while making full use of flexible Help Notes or Guidelines to assist readers with examples or clarification.*

*It is certainly a key issue that consumers are not confused between advertising and editorial content and we believe that there are various ways of achieving this, one of which is clear labeling. It is equally important that in attempting to protect consumers from such confusion regulation should not inhibit the consumer's freedom of choice, in addition it should not deter continued and significant investment in the development of new and popular service offerings that are of clear consumer benefit.*

*It does appear that the BCAP Code could result in advertising being banned for legitimate and lawful services e.g. "physic" and this appears to equate to a content based judgment beyond the scope of the BCAP remit. However, it could also be that the situation is confused by the use of archaic and misleading terms such as "occult" since such services are dominated by harmless and popular tarot type offerings that are also widely available from other media and seen as entertainment services.*

**Statement of Representation.**

*Square1 confirms that this response has been compiled using some of the replies made by AIME and following a process of circulation of the relevant Consultation documentation to all our staff members for consideration and comment we have added points we feel are relevant.*

*The views expressed in this response are a fair representation of the views held by Square1 and its Directors. Individual staff and Directors are actively encouraged to submit their own independent views as they deem fit.*

Close

We look forward to your response

**The BCAP Code Review**  
**Consultation on the proposed BCAP Broadcast Advertising Standards Code 2009**

**INTRODUCTION**

Please find STV's response to the BCAP Consultation document.

STV has had sight of ITV plc's Submission version and supports it. We highlight certain specific observations of STV below; but otherwise we are in agreement with all of BCAP's proposed amendments.

**STV's RESPONSE**

**Section 2: Recognition of Advertising**

**Impartiality of station presenters and newsreaders**

**Question 6**

- i) Given BCAP's policy consideration, do you agree that radio rule 18, section 2, should not be included in the proposed Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that radio station presenters who do not currently and regularly read the news should be exempted from the rule that restricts presenters from featuring in radio advertisements that promote a product or service that could be seen to compromise the impartiality of their programming role? If your answer is no, please explain why.

***STV Response:** STV is of the view that, rather than removing the rules for radio, consistency should be maintained across all broadcasting media in order to prevent the harm intended by the law.*

*TV is a powerful advertising medium and a television newsreader will be recognised by viewers from a face and possibly by a voice. A radio newsreader will without doubt be recognised by listeners from a voice alone. Indeed, it is likely that the individuality and quality of a radio newsreader's voice is a key factor to appearing on radio. It is STV's view that an audio impact of a television newsreader on a TV or a radio advertisement is likely to have less of an impact than a radio newsreader advertising on radio.*

*For this reason STV is of the view that consistency is necessary to avoid impartiality across all media, radio and TV and therefore the rules should be consistently applied.*

**Section 3: Misleading**

**Use of the Word Free**

**Question 17**

- i) Given BCAP's policy consideration, do you agree that rule 3.25 should be included in the Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that rule 3.26 should be included in the Code? If your answer is no, please explain why.

**STV Response:** *The BCAP rules state that the price of a product or service cannot be inflated to recover the cost of supplying the free item or service; and an item cannot be described as free if consumers have to pay for packing, packaging, handling or administration.*

*STV agrees with this rule but would appreciate the provision of definitions of the following to provide clarity:*

- *a product versus a package;*
- *an element of a package;*
- *a 'money-back offer';*
- *'an offer for which a non-refundable purchase' scheme.*

## **Section 5: Children**

### **Expensive products of interest to children**

#### **Question 29**

i) Given BCAP's policy consideration, do you agree rule 5.14 should be applied to advertisements broadcast on all Ofcom-licensed television channels and not only those broadcast to a UK audience? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree rule 5.14 should define an 'expensive' product of interest to children to be £30 or more? If your answer is no, please explain why.

iii) Given BCAP's policy consideration, do you agree rule 5.14 should be included in the Code? If your answer is no, please explain why.

**STV Response:** *STV agrees with these new rules and the need to establish what an 'expensive toy' is. However, with regard to Question 29(ii) STV is of the view that the value of an expensive toy should take additional factors into consideration over and above inflation, such as social trends and the technological advances within multi-media environments. Whilst the value may come out the same, it would be in order to conduct the review with the additional factors incorporated. For example, children today have mobile phones, MP3 players, laptops, videos etc which are all over £30.00 and consol 'games' for children market around £39.99.*

## **Section 11: Medicines, Medical Devices, Treatments, and Health**

### **Services including clinics, establishments and the like offering advice on, or treatment in, medical, personal or other health matters**

#### **Question 59**

Given BCAP's policy consideration, do you agree that rule 11.9 should be included in the proposed BCAP Code? If your answer is no, please explain why.

**STV Response:** *STV agrees with the rule but would query the juxtaposition of "medical, personal or other health matters", should it be "medical, health or other personal matters"? The issue is whether or not personal has to be health related, or, clearly- as it would appear- not.*

## **Section 17: Gambling**

### **Consistency; principle**

#### **Question 105**

Given BCAP's policy consideration, do you agree in principle that National Lottery and SLA lottery

broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why.

**STV Response:** *STV agrees that the rules between the lotteries should be consistent. STV also understands the ASA requirement to protect children (under 16's). However, the legislation defines the age limit set for the lottery comes from a statutory basis and the age limit set in the advertising rule conflicts with this.*

## **Section 20: Motoring**

### **References to speeds over 70mph**

#### **Question 119**

- i) Given BCAP's policy consideration, do you agree that it is not justified to maintain a rule that prohibits references to speeds of over 70mph in motoring advertisements? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that rule 20.4 should be included in BCAP's new Code? If your answer is no, please explain why

**STV Response:** *STV is of the view that it remains justifiable to maintain the rule to prevent speeds of over 70mph.*

*Whilst we agree that the proposed drafting of Rule 20.4 is more relevant regulation as it calls for a judgment call around speed generally and its relevant appropriateness, we question why then remove the prohibition on express referencing to speeds over 70mph. Does it not make more sense to retain both?*

## **Section 22: Premium-Rate Services**

#### **Question 124**

Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only? If your answer is no, please explain why.

#### **Question 128**

Given BCAP's policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2? If your answer is no, please explain why.

**STV Response:** *STV agrees with this rule which should apply across all media to ensure the appropriate level of protection is afforded to children and vulnerable persons.*

## **Section 24: Homeworking Schemes**

### **New rules for radio**

#### **Question 130**

- i) Given BCAP's policy consideration, do you agree that rules 24.1 and 24.2.1 should be applied to radio advertisements, as they presently are to TV advertisements? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that it is not necessary to extend to radio the TV ban on advertisements that involve a charge for raw materials or advertisements that include an offer from the advertiser to buy goods made by the homeworker? If your answer is no, please explain why.

**STV Response:** *STV agrees with these rules, however, it is of the view that these rules should be applied consistently across all broadcasting media.*



## **Section 32: Scheduling**

### **Artist separation**

#### **Question 154**

Given BCAP's policy consideration, do you agree that it is no longer necessary to maintain 'the artist separation rule'? If your answer is no, please explain why.

**STV Response:** *STV welcomes this change to the rules. Indeed, STV would like to take the opportunity to explore the possibility of extending the current methods of advertising in the UK to mirror those practiced by Member States in the European Union. Namely, telepromotion.*

*The European Union is bound by the same regulations as the UK in that advertising and editorial must remain separate. The European courts held that telepromotion – which is a form of advertising based on the interruption of a game show by slots devoted to the presentation of one or more products or services, where the programme presenter momentarily swaps their role in the games in progress, for one as 'promoters' of the goods or services which are the object of the advertising presentation – accords with the Television Without Frontiers Directive.*

*The removal of the artist separation restriction creates an exciting opportunity for the further development of advertising on television which would bring it in line with its counterparts in Europe and STV would welcome further discussion on this matter. STV appreciates that any discussions will require input from Ofcom.*

