

SECTION 8: SALES PROMOTIONS

Question 17: Given CAP's policy consideration, do you agree that rule 8.27 on withholding prizes should be included in the Code? If your answer is no, please explain why.

<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>ASDA; Association for Interactive Media & Entertainment (AIME); Charity Law Association; E.ON Energy Limited; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Mobile Entertainment Forum; Proprietary Association of Great Britain; Redcats (Brands) Ltd</p> <p>Two organisations</p>	<p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.27 on withholding prizes should be included in the Code</p> <p>2. Redcats (Brands) Ltd & An organisation: i) Expressed support for the objective of the rule but suggested giving additional thought to the wording as there may be circumstances where it is not possible to comply, such as supply or financial issues with a third party supplier, or other circumstances out of the promoter's control.</p> <p>3. Redcats (Brands) Ltd: Noted a recent ASA adjudication where the prize</p>	<p>1. CAP agrees</p> <p>2. i) CAP considers it is appropriate to include this rule as it protects consumers from a misleading practice and promoters whose reputation is placed at risk by those undertaking that practice. See also amendments below.</p> <p>The ASA makes a case-by-case consideration of individual complaints: CAP acknowledges that the judgement is a matter of interpretation and believes that the Codes allow the ASA to make the necessary subjective judgements on a case-by-case basis.</p> <p>3. CAP does not consider that the proposed rule would conflict with the adjudication cited.</p>

An individual	was withheld after the promoter discovered numerous participants had cheated (Symworks t/a Shinyshack)	
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Responses received against CAP's proposal:	Summaries of significant points:	CAP's evaluation of those points and action points:
British Sky Broadcasting; British Telecommunications; Enable; RWE npower	<p>1. The respondents listed in the column to the left disagree that CAP proposed rule 8.27 on withholding prizes should be included in the Code</p> <p>2. <i>British Sky Broadcasting, RWE npower and British Telecommunications:</i> Noted that there are circumstances where it may be appropriate to withhold a prize. Also, expressed concern that proposed rule 8.27 could contradict rules 8.15.1 and 8.28.2 as they could be interpreted to mean that promoters are prohibited from substituting the advertised prize for a reasonable equivalent where there are legitimate reasons for doing so.</p> <p>3. <i>Enable:</i> Noted that while the Code requires Promoters to be fair, participants sometimes win by cheating. Respondent would like to see these individuals prosecuted where possible.</p>	<p>1. CAP disagrees</p> <p>2. CAP considers it is appropriate to include this rule and has amended it for clarity: <i>Withholding prizes (see also 18.15.1 and 8.28.2) is justified only if participants have not met the qualifying criteria set out clearly in the rules of the promotion.</i> -----</p> <p>3. CAP does not regulate consumers, nor does it have statutory powers</p>

Question 18: Given CAP's policy consideration, do you agree that rule 8.17.4.b on closing dates on promotions targeted to children should be included in the Code? If your answer is no, please explain why?

<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>ASDA; AIME; E.ON Energy Limited; Family and Parenting Institute; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Mobile Entertainment Forum; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower</p>	<p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.17.4.b on closing dates on promotions targeted to children should be included in the Code</p>	<p>1. CAP agrees</p>
<p>Two organisations</p>		

<p><i>Responses received against CAP's proposal:</i></p> <p>Charity Law Association; Enable</p>	<p><i>Summaries of significant points:</i></p> <p>1. <i>Charity Law Association:</i> Suggested that CAP should also regulate whether the published closing date was adhered to by the promoter.</p> <p>2. <i>Enable:</i> Requested further clarification about where a closing date would be required.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP considers that under this rule, the ASA could consider and potentially investigate whether the published date had been adhered to. Rule 8.17.4e provides additional protection.</p> <p>2. CAP considers the proposed wording is clear. Rules 8.17.4 a-e give further details of when closing dates are needed.</p>
<p>Question 19: Given CAP's policy consideration, do you agree that rule 8.17.6 on prizes and gifts should be included in the Code? If your answer is no, please explain why.</p>		

<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>ASDA; AIME; Charity Law Association; E.ON Energy Limited; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Office of Fair Trading; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower</p> <p>Two organisations</p>	<p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.17.6 on prizes and gifts should be included in the Code</p> <p>2. <i>AIME:</i> Agreed with the sentiment of the proposed rule but felt it is adequately covered by general 'misleading' rules and suggested that this specific would be more appropriate as a Help Note or Guidance.</p> <p>-----</p>	<p>1. CAP agrees</p> <p>2. CAP considers it is appropriate to include this rule. This proposal protects consumers from a misleading practice and promoters whose reputation is placed at risk by those undertaking that practice. CAP considers the proposed revision to the Code is proportionate, because for the purposes of running their promotion, promoters should already know, or be able to make a reasonable estimate of, the number of items that they will need to supply in preparation for their promotion.</p>
<i>Responses received</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action</i>

<p><i>against proposal:</i></p> <p>Alliance British Consortium, Consumer Group</p>	<p>CAP's Boots; Retail Policy</p> <p>1. Alliance Boots: Considered it would be incorrect to put in an estimate of the total prize the number of prizes capable of being won when in actual fact some of them may not be won by virtue of the promotion not being a success.</p> <p>2. British Retail Consortium, Consumer Policy Group: Considered this rule to be impractical</p>	<p><i>points:</i></p> <p>1. CAP considers that the proposed rule would not conflict with the scenario outlined by the respondent. Rule 8.27 provides additional clarity.</p> <p>2. CAP considers it is appropriate to include this rule. This proposal protects consumers from a misleading practice and promoters whose reputation is placed at risk by those undertaking that practice. CAP considers the proposed revision to the Code is proportionate, because for the purposes of running their promotion, promoters should already know, or be able to make a reasonable estimate of, the number of items that they will need to supply in preparation for their promotion.</p>
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Question 20: Given CAP's policy consideration, do you agree that rule 8.17.6.a on prizes and gifts should be included in the Code? If your answer is no, please explain why.

<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>ASDA; AIME Charity Law Association; E.ON Energy Limited; Institute of Practitioners in Advertising; Institute of Sales Promotion; Office of Fair Trading; Proprietary Association of Great Britain; Redcats (Brands) Ltd</p> <p>Two organisations</p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.17.6a on prizes and gifts should be included in the Code</p> <p>-----</p> <p>2. AIME: Pointed to its response to Question 19 and proposed that this could be covered under a general 'misleading' rule</p> <p>-----</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP agrees</p> <p>-----</p> <p>2. CAP considers it is appropriate to include this rule for reasons outlined under Question 19.</p> <p>-----</p>
<p><i>Responses received against CAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1.</p>

<p>Alliance Boots; British Retail Consortium, Consumer Policy Group; Enable; Kraft Foods UK and Ireland</p>	<p>disagree that CAP proposed rule 8.17.6a on prizes and gifts should be included in the Code</p> <p>2. Alliance Boots: It would be impractical to carry out the estimations required by that course in a way that would be meaningful to customers.</p>	<p>CAP disagrees</p> <p>2. In order that the consumer has the necessary information to decide whether or not to respond to the promotion, CAP considers it is reasonable for promoters to make clear which of the prizes stated <i>will</i> be awarded in the promotion and those that <i>could</i> be awarded, including estimated prize funds.</p>
	<p>3. British Retail Consortium, Consumer Policy Group: Considered this rule to be impractical</p> <p>4. Enable: Believed the rule should go a step further to make clear to the consumer how the prizes are awarded, what opportunity they have to win and more importantly the fact that a significant number of the prizes will not be won, but are available to be won</p> <p>5. Kraft Foods UK and Ireland: Suggested that this additional rule would over-complicate promotional communications and felt</p>	<p>3. CAP considers it is appropriate to include this rule for reasons outlined under Question 19 and in 2. above.</p> <p>4. CAP considers that the proposed rules under 8.17 are proportionate and provide an appropriate level of protection for the consumer. Rule 8.28 and its subdivisions provide further clarity in this area.</p> <p>5. See 2. above</p>

	<p>that the distinction between prizes that could be won and those that will be won is obvious to participants.</p>	
<p>Question 21: Given CAP’s policy consideration, do you agree that rule 8.18 on access to significant conditions should be included in the Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of CAP’s proposal from:</i></p> <p>AIME; British Retail Consortium, Consumer Policy Group; Charity Law Association; E.ON Energy Limited; Enable; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Office of Fair Trading; Proprietary Association of Great Britain; Redcats (Brands) Ltd; Sainsbury’s supermarkets</p>	<p><i>Summaries of significant points:</i></p> <p>1. ----- The respondents listed in the column to the left agree that CAP proposed rule 8.18 on access to significant conditions should be included in the Code</p> <p>2. ----- AIME and Institute of Sales Promotion: Agreed that this should be in the Code or, alternatively, clarified in Help Notes or Guidelines.</p> <p>3. ----- An organisation: Agreed but asked for clarification concerning rule 3.10 which seems to be inconsistent with the latitude permitted advertisers in rule 8.18.</p>	<p><i>CAP’s evaluation of those points and action points:</i></p> <p>1. ----- CAP agrees</p> <p>2. ----- CAP considers it is appropriate and proportionate to include this requirement as a rule</p> <p>3. ----- CAP does not consider that this rule contradicts proposed rule 3.10 (“Qualifications must be clear to consumers who see or hear the marketing communication only once”). CAP considers that both rules require the marketer to communicate the material information needed by consumers to make a decision.</p>

<p>Two organisations</p>	<p>4. An organisation: Agreed but asked for clarification on the meanings of 'time and space' as stated in the proposed rule</p>	<p>4. CAP considers that this is clear in the context of marketing communications</p>
	<p>5. Enable: Asked for clarification that this information would be available to consumers before purchase</p>	<p>5. CAP clarifies that the rule refers to 'marketing communications' which as such would be targeted at consumers prior to purchase</p>
	<p>6. Alliance Boots, British Retail Consortium, Consumer Policy Group, ADSA, RWE npower, Sainsbury's supermarkets, Tesco Stores Ltd: Asked for clarification about whether or not information on a website would count as an 'easily-accessible source'.</p>	<p>6. CAP considers that whether websites would count as an easily-accessible source would depend on the type of promotion and its target audience; this would be considered on a case-by-case basis by the ASA.</p>
	<p>7. RWE npower: Asked for clarification about whether a reference in a marketing communication to conditions applying would comply with this rule even without any further detail about those conditions</p>	<p>7. The CPRs make clear that marketing communications must not omit material information if that omission, or presentation, is likely to affect consumers' decisions about whether and how to buy the advertised product, unless the information is obvious from the context or the marketing communication is limited by time or space and the advertiser takes steps to make that information available to consumers by other means.</p>

		The ASA makes a case-by-case consideration of individual complaints: CAP acknowledges that the judgement is a matter of interpretation and believes that the Codes allow the ASA to make the necessary subjective judgements on a case-by-case basis.
<i>Responses received against CAP's proposal:</i> Consumer Focus	<i>Summaries of significant points:</i> 1. Consumer Focus: Suggested an amendment to this rule: "Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable..." Considered that the above wording would be particularly helpful in relation to advertising on small screen devices	<i>CAP's evaluation of those points and action points:</i> 1. CAP considers that the sole purpose of this rule is to acknowledge limitations that arise out of a lack of media time or space. The respondent's proposal would render the rule meaningless given the requirements set out in rule 8.17.
<p>Question 22: Do you agree that rule 8.19 on prize promotions should be included in the CAP Code? If your answer is no, please explain why.</p>		
<i>Responses received in favour of CAP's</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>

<p><i>proposal from:</i></p> <p>ASDA; Charity Law Association; E.ON Energy Limited; Enable; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Office of Fair Trading; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower</p> <p>Two organisations</p>	<p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.19 on prize promotions should be included in the Code</p> <hr/> <p>2. AIME: Agreed but considered that this rule was more relevant to prize draw management rather than marketing communications.</p> <hr/> <p>3. Redcats (Brands) Ltd: In theory, yes, although there is likely to be some confusion around what is classed as a “significant proportion.”</p>	<p>1. CAP agrees</p> <hr/> <p>2. CAP considers that the Principle and Definition at the beginning of this section make its remit clear.</p> <hr/> <p>3. The ASA makes a case-by-case consideration of individual complaints: CAP acknowledges that the judgement is a matter of interpretation and believes that the Codes allow the ASA to make the necessary subjective judgements on a case-by-case basis.</p>
<p><i>Responses received against CAP’s proposal:</i></p> <p>Edwin Coe LLP</p>	<p><i>Summaries of significant points:</i></p> <p>1. Edwin Coe LLP: Agreed with CAP’s intention to close the loophole that presently exists but considered that the requirement to use the term ‘gifts’ is too prescriptive as some companies may prefer to use an alternative term such as ‘awards’</p>	<p><i>CAP’s evaluation of those points and action points:</i></p> <p>1. CAP considers this is a useful comment but is concerned that the example used by the respondent (‘awards’) could be ambiguous.</p> <p>CAP has amended the wording to read:</p> <p><i>“Promoters must not claim that consumers have</i></p>

	<p>Proposed amending the wording of the rule to read:</p> <p><i>“Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should not be described as prizes. If a promotion offers a gift to a significant proportion and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.”</i></p>	<p><i>won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any other term for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.”</i></p>
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Question 23: Given CAP’s policy consideration, do you agree that rule 8.24 on prize promotions and the laws of chance should be included in the Code? If your answer is no, please explain why.

<p><i>Responses received in favour of CAP’s proposal from:</i></p> <p>ASDA; British Sky Broadcasting; British Telecommunications; Charity Law Association; Enable;</p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.24 on prize promotions and the laws of chance should be included in the Code</p>	<p><i>CAP’s evaluation of those points and action points:</i></p> <p>1. CAP agrees</p>
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<p>E.ON Energy Limited; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Mobile Entertainment Forum; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower</p> <p>Two organisations</p>	<p>2. AIME: Considered that it was not within CAP's remit to specify how the mechanics of prize draws should be structured.</p> <p>3. An organisation: Welcomed the inclusion of the rule but requested further clarification in respect of what was meant by a "random computer process", the impact of any manual input into this process and whether the use of a computerised process for obtaining the winners would need to be specifically stated within the terms and conditions of any sales promotion.</p> <p>4. Institute of Sales Promotion: Agreed but suggest it is amended to:</p> <p><i>Promoters of prize draws must ensure that prizes are awarded in accordance with the laws of chance and, unless winners are selected by a verifiably random computer process, conducted independently or under the supervision of an independent observer.'</i></p> <p>This amendment would allow for draws to be conducted by the independent person, not just</p>	<p>2. CAP considers that the Principle and Definition at the beginning of this section make its remit clear.</p> <p>3. CAP considers the computer process should be verified to be random, for example by the programmer or software manufacturer, and suitable for the task.</p> <p>The ASA makes a case-by-case consideration of individual complaints: CAP acknowledges that the judgement is a matter of interpretation and believes that the Codes allow the ASA to make the necessary subjective judgements on a case-by-case basis.</p> <p>4. CAP considers this a useful suggestion and has amended the rule to read:</p> <p><i>Promoters of prize draws must ensure that prizes are awarded in accordance with the laws of chance and, unless winners are selected by a computer process that produces verifiably random results, by an independent person, or under the supervision of an independent person.</i></p>
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	<p>having them as the observer of a process conducted by the promoter or their agency.</p>	
	<p>5. Mobile Entertainment Forum: Agreed but suggested that this area could be covered by the 'misleading' section of the Code</p>	<p>5. CAP considers it is appropriate and proportionate to include this requirement as a distinct rule</p>
	<p>6. Enable: Agreed provided the verified random computer process is regularly checked and audited.</p>	<p>6. CAP considers that the proposed wording is proportionate and adequate.</p> <p>The ASA makes a case-by-case consideration of individual complaints: CAP acknowledges that the judgement is a matter of interpretation and believes that the Codes allow the ASA to make the necessary subjective judgements on a case-by-case basis, for example, based on the endeavours made by the promoter to ensure the computer process in place.</p>
<p><i>Responses received against CAP's proposal:</i></p>	<p><i>Summaries of significant points:</i></p> <p>No significant points were raised</p>	<p><i>CAP's evaluation of those points and action points:</i></p>
<p>Question 24:</p> <p>i) Do you agree that the present requirement, in CAP rule 35.8, for a promoter to obtain an independently audited statement that all prizes have been distributed, or made available for distribution on a fair and random basis is disproportionate and should not therefore be included in the Code? If your answer is no,</p>		

please explain why?		
ii) Given CAP's policy consideration, do you agree that rule 8.25 on auditing instant-win promotions should be included in the Code? If your answer is no, please explain why.		
<i>Responses received in favour of CAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>ASDA; Charity Law Association; E.ON Energy Limited; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Proprietary Association of Great Britain; RWE npower</p> <p>Two organisations</p>	<p>1. The respondents listed in the column to the left agree that present CAP rule 35.8 should not be included in the Code and that rule 8.25 on auditing instant-win promotions should be included in the Code</p>	<p>1. See below</p>
	<p>2. AIME: Considered the rule sensible but suggested that it was not within CAP's remit to specify how the mechanics of prize draws and instant win promotions should be structured.</p>	<p>2. CAP considers that the Principle and Definition at the beginning of this section make clear the remit of the rules.</p>
	<p>3. Kraft Foods UK and Ireland: Expressed support for the rule in general but also raised some concerns (see point 2 below)</p> <p>Asked for clarification on whether rule applied to national promotions or national promoters</p>	<p>3. See 2. below</p>

<i>Responses received against CAP's proposal:</i>	<p>Institute of Practitioners in Advertising ii) no</p> <p><i>Summaries of significant points:</i></p>	<i>CAP's evaluation of those points and action points:</i>
<p>Alliance Boots; British Retail Consortium, Consumer Policy Group; Charity Law Association; Enable; Institute of Practitioners in Advertising; Kraft Foods UK and Ireland; Mobile Entertainment Forum; Redcats (Brands) Ltd; Sainsbury's supermarkets; Which?</p>	<p>1. The respondents listed in the column to the left disagree that present CAP rule 35.8 should not be included in the Code and that rule 8.25 on auditing instant-win promotions should be included in the Code</p> <p>2. Alliance Boots; British Retail Consortium, Consumer Policy Group & Kraft Foods UK and Ireland: Did not feel the extra auditing requirement for national promotions was practical, cost-effective or necessary for consumer protection. Considered that it may discourage companies from running large-scale promotions. Noted that <u>some national promotions are run by small companies and vice versa.</u></p> <p>3. Alliance Boots: Queried what was meant by 'national' – for example, England, UK, GB?</p> <p>4. Charity Law Association response to ii): Suggested that it was disproportionate that small</p>	<p>1. See below</p> <p>2. In light of the potential confusion caused by making a distinction between small and national promotions, CAP has decided to retain the present requirement that all instant-win promotions, both regional and national, must be independently audited.</p> <p>3. See 2. above</p> <p>4. See 2. above</p>



	<p>promotions should be independently verified. Suggested it should be sufficient for them to be capable of independent verification.</p>	
	<p>5. Enable: Considered the requirement to be ambiguous.</p>	<p>5. See 2. above</p>
	<p>6. Mobile Entertainment Forum: Considered this rule to be outside the remit of the CAP Code as it relates to substantiation</p>	<p>6. CAP considers its remit to be clear and that rules relating to substantiation are in line with that remit</p>
	<p>7. Redcats (Brands) Ltd: i) Expressed confusion about the use of “can be” for regional promotions and “must be” for national promotions.</p>	<p>7. i) See 2. above</p>
	<p>ii) Requested clarification about whether rule would apply to concurrent regional promotions which cover most of the nation.</p>	<p>ii) See 2. above</p>
	<p>iii) Considered that the ability to audit should suffice in all cases</p>	<p>iii) CAP considers the requirement to audit offers an effective level of protection for consumers</p>
	<p>8.</p>	

	<p>Sainsbury's supermarkets: Expressed confusion about the logic behind the differences in verification required between local and national competitions. Suggested that the same rules should apply to both.</p>	<p>8. See 2. above</p>
	<p>9. Which?: Requested greater clarity about what constitutes a "suitable independent party".</p>	<p>9. CAP will consider producing guidance to accompany this rule at a later date</p>

Question 25: Given CAP's policy consideration, do you agree that rule 8.26 on the judging of prize promotions should be included in the Code? If your answer is no, please explain why.

<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>AIME; Charity Law Association; E.ON Energy Limited; Enable; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Proprietary</p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.26 on the judging of prize promotions should be included in the Code</p> <p>2. AIME: Considered the rule to be sensible but questioned whether the subject matter lies within the allocated remit of CAP.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP agrees</p> <p>2. CAP considers its remit to be clear and that this rule is in line with that remit</p>
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<p>Association of Great Britain; Redcats (Brands) Ltd; RWE npower; Tesco Stores Ltd</p> <p>Two organisations</p>	<p>3. An organisation: Welcomed the proposed rule but suggested that it would be helpful to maintain the present requirement that the independent judge is competent to judge the “subject matter”.</p>	<p>3. CAP considers that ‘competent to judge the competition’ has the same meaning as the respondent’s proposal.</p>
	<p>4. Institute of Sales Promotion: Requested more detail in a Guidance Note to determine who is regarded as Independent – as per previous advice from the Sales Promotion Panel.</p>	<p>4. CAP will consider developing guidance in this area at a later date</p>
	<p>5. British Retail Consortium, Consumer Policy Group: Asked for clarification on what is meant here by ‘independent’ judge</p>	<p>5. CAP will consider developing guidance in this area at a later date</p>
	<p>6. Redcats (Brands) Ltd: Agreed but noted that it was difficult to be certain about the composition the pool of entrants, which could make independence difficult.</p>	<p>6. CAP notes this comment and considers that in the event of a complaint, the ASA would consider and potentially investigate whether the measures put in place by the marketer were adequate.</p>
	<p>7. Tesco Stores Ltd: Agreed that the winning entry should be selected by an independent person but considered it is sufficient that the judge be independent from the</p>	<p>7. CAP agrees that it may be appropriate for the promoter to have some involvement in the judging process and notes that the rule allows for this in that judging can be carried out by a panel, of</p>

	<p>pool of entrants as it may be appropriate for the promoter to have some involvement in the judging process.</p>	<p>which one member must be independent of the promoter, its intermediaries and entrants.</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>Alliance Boots; ASDA; British Sky Broadcasting; Mobile Entertainment Forum; Sainsbury's supermarkets</p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left disagree that CAP proposed rule 8.26 on the judging of prize promotions should be included in the Code</p> <hr style="border-top: 1px dashed black;"/> <p>2. Alliance Boots: Suggested that the rule should simply require the judge to be independent of the competition. Considered that the requirement to appoint a judge independent of the promoter and intermediaries as well as the pool of entrants has onerous cost implications and could reduce the number of</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP disagrees but has amended the rule for additional clarity:</p> <p><i>In competitions, if the selection of a winning entry is open to subjective interpretation, an independent judge or a panel that includes one independent member must be appointed. In either case, the judge or panel member must be demonstrably independent, especially from the competition's promoters and intermediaries and from the pool of entrants from which the eventual winner is picked. Those appointed to act as judges should be competent to judge the competition and their full names must be made available on request.</i></p> <hr style="border-top: 1px dashed black;"/> <p>2. CAP considers that the independence of a judge or a panel member that selects winning entries on the basis of a subjective interpretation is fundamental to maintaining consumer confidence in those prize promotions. CAP considers that independence from the competition's promoters and intermediaries is not sufficient. It considers</p>

	<p>promotions.</p>	<p>that the judge or panel should also be independent of the pool of entrants from which the eventual winner is picked.</p>
	<p>3. ASDA: i) Considered that the requirement for an “independent judge” for national competitions appeared inconsistent with the rules for regional competitions where no such requirement is specified.</p>	<p>3. ii) CAP does not consider that this rule makes a distinction between national and regional competitions; the previous proposed rule (8.25) made that distinction (see above for amendment).</p>
	<p>ii) Also suggested that promotions and competitions should be treated separately within the Code for clarity.</p>	<p>ii) CAP considers that the distinction is made clear as appropriate in the principle and definition at the beginning of this section and in the wording of individual rules</p>
	<p>4. British Sky Broadcasting: Considered that in requiring an independent judge, this rule places administrative and economic burdens on businesses which are disproportionate. Also considered that this requirement could affect promoters’ need for confidentiality.</p>	<p>4. CAP considers that the independence of a judge or a panel member that selects winning entries on the basis of a subjective interpretation is fundamental to maintaining consumer confidence in those prize promotions.</p>
	<p>5. Mobile Entertainment Forum: Considered this rule to be outside the remit of the CAP Code as it relates to substantiation</p>	<p>5. CAP considers its remit to be clear and that this rule is in line with that remit</p>

	<p>6. Sainsbury's supermarkets: Asked for clarification on what is meant here by 'independent' judge.</p> <p>Considered that 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.</p>	<p>6. CAP considers that the independence of a judge or a panel member that selects winning entries on the basis of a subjective interpretation is fundamental to maintaining consumer confidence in those prize promotions.</p> <p>CAP considers that in the event of a complaint, the ASA would consider and potentially investigate whether the measures put in place by the marketer were adequate.</p>
	<p>7. Sainsbury's supermarkets and British Retail Consortium, Consumer Policy Group: Considered that requirement for an independent judge goes further than the Gambling Act requirement.</p>	<p>7. CAP considers that this rule is consistent with the Gambling Act 2005</p>
<p>Question 26: Given CAP's policy consideration, do you agree that rule 8.28.3 regarding the receipt of prizes should be included in the Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of CAP's proposal from:</i></p> <p>ASDA; AIME; Charity Law Association; E.ON Energy Limited; Enable; Institute of</p>	<p><i>Summaries of significant points:</i></p> <p>1. The respondents listed in the column to the left agree that CAP proposed rule 8.28.3 regarding the receipt of prizes should be included in the Code</p> <p>2. An organisation:</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP agrees</p> <p>2. CAP confirms that this question refers to</p>

<p>Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Mobile Entertainment Forum; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower</p> <p>Two organisations</p>	<p>Noted that the consultation document mistakenly referred to this rule as 8.23.3 instead of 8.28.3.</p> <p>Expressed support for the inclusion of proposed rule 8.28.3.</p>	<p>proposed rule 8.28.3</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>British Broadcasting Sky</p>	<p><i>Summaries of significant points:</i></p> <p>1. British Sky Broadcasting: Noted that it may not always be possible for a promoter to provide a date by which winners will receive their prize, for example, when delivery or supply of a prize is dependent on third parties.</p> <p>Considered it should be sufficient to provide a timescale within which the prize will be delivered, as requiring a specific date could lead to promoters giving prizewinners arbitrarily longstop dates to avoid breaking the rule.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>1. CAP notes that this rule does not require a promoter to specify a date unless it is anticipated that the prizewinner will receive the prize more than 30 days after the closing date. This rule offers protection for the consumer in requiring the promoter to communicate clearly with the prizewinner about the likely date of delivery.</p> <p>CAP considers that in the event of a complaint, the ASA would consider and potentially investigate whether the timeframe given by the promoter was clearly communicated.</p>

Question 27: Given CAP’s policy consideration, do you agree that rules 8.33 and 8.33.9 correctly updates present rule 37.1(i) to reflect the CPRs? If your answer is no, please explain why.

8.33

Promotions run by third parties (for example commercial companies) claiming that participation will benefit a registered charity or cause must:

8.33.9

not directly encourage children to buy, or exhort children to persuade an adult to buy for them, a product that promotes charitable purposes

<i>Responses received in favour of CAP’s proposal from:</i>	<i>Summaries of significant points:</i>	<i>CAP’s evaluation of those points and action points</i>
Archbishops’ Council, church of England;	<p>1. Respondent agrees with each of the recommendations made in questions 12-14, and question 27, which together represent a welcome tightening of the rules relating to advertising targeted at young people.</p>	<p>1. CAP welcomes the comments from the Archbishops’ Council, Church of England.</p>
Charity Association Law	<p>2. Respondent prefers proposal over the present rule 37.1.</p>	<p>2. CAP welcomes the comments from the Charity Law Association</p>
Family and Parenting Institute	<p>3. Respondent agrees proposed rules 8.33 and 8.33.9 correctly update the present rule 37.1(i). In the case of charitable organisations it may be harder for children to recognise the persuasive element in an advertisement as distinct from the charitable works the organisation does.</p>	<p>3. CAP welcomes the comments from the Family and Parenting Institute.</p>

<p>Mobile Entertainment Forum</p>	<p>4. Respondent agrees. Although considers this may lead to conflict with the PhonepayPlus (PPP) Code of Practice. Respondent would prefer regulatory certainty and therefore recommends referring all complaints about the advertising of premium rate services to the PPP in the first instance unless the issue is one of purely advertising.</p>	<p>4. CAP understands this is not a comment on the proposed rule, but on the application of it. The CAP Code covers many areas for which fellow regulators also share responsibility. For example in the food sector – Food Standards Agency and the Medicines sector – Medicines and Healthcare products Regulatory Agency. CAP, the ASA and its fellow regulators are well experienced in advertising regulation and liaise closely when complaints are received.</p> <p>Additionally, the introduction to the CAP Code clarifies CAP’s remit in relation to PP+:</p> <p><i>“The Code does not apply to:</i></p> <p><i>b) the contents of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code.”</i></p>
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<p>ASDA; AIME; E.ON Energy Limited; Enable; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Proprietary Association of Great Britain; Redcats (Brands) Ltd; RWE npower.</p> <p>Three organisations</p>	<p>5. Respondents agreed that rules 8.33 and 8.33.9 correctly updates present rule 37.1(i) to reflect the CPRs.</p>	<p>5. N/A</p>
<p><i>Responses received against CAP's proposal:</i></p> <p>Office of Fair Trading</p>	<p><i>Summaries of significant points:</i></p> <p>6. Respondent considers it would be preferable, and in their view more correct, for the proposed new rule 8.33.9 to say 'not directly encourage...any product' rather than referring, as currently proposed, only and specifically to a product that promotes charitable purposes.</p>	<p><i>CAP's evaluation of those points and action points:</i></p> <p>6. CAP considers the issue raised by the OFT is adequately catered for by a dedicated rule in section 5 of the proposed CAP Code:</p> <p>Section 5: Children Direct exhortation and parental authority 5.4 Marketing communications addressed to or targeted directly at children: 5.4.2</p>

		<p><u>must not include a direct exhortation to children to buy an advertised product</u> or persuade their parents or other adults to buy an advertised product for them.</p> <p>CAP considers rule 33.9 should be relevant to its section i.e. charity-linked promotions. Additionally, the principle at the start of the section states:</p> <p>...The sales promotion rules must be read in conjunction with all other parts of the Code, including the rules relevant to Alcohol and Children sections.</p>
<p>Question 28:</p> <p>i) Taking into account CAP’s general policy objectives, do you agree that CAP’s Sales Promotions rules are necessary and easily understandable? If your answer is no, please explain why.</p> <p>ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Sales Promotions rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?</p> <p>iii) Do you have other comments on this section?</p>		
<p><i>Responses received from:</i></p> <p>Alliance Boots; ASDA; AIME; British Naturism; British Retail</p>	<p>ASDA E.ON Energy Limited Institute of Practitioners in Advertising Institute of Sales Promotion Nestle Proprietary Association of Great Britain RWE npower An individual</p>	<p><i>CAP’s evaluation of those points and action points:</i></p>

<p>Consortium, Consumer Policy Group; Charity Law Association; Consumer Focus; DMA; E.ON Energy Limited; Enable; Home Retail Group; Independent Healthcare Advisory Services; Institute of Practitioners in Advertising; Institute of Sales Promotion; Kraft Foods UK and Ireland; Nestle; Office of Fair Trading; Proprietary Association of Great Britain; RWE npower; Sainsbury's supermarkets; Tesco Stores Ltd;</p>	<p>An organisation</p> <p>These organisations agreed the rules in the proposed Sales Promotions section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document:</p> <p><i>Summaries of significant points:</i></p> <p>1. Alliance Boots: i) Found this section confusing as there was no clarity between what equalled a promotion, what related to a competition and what obligations were required to be delivered in each case.</p> <hr/> <p>2. AIME: Suggested that CAP may be straying beyond its remit by attempting to regulate the content and processes of the services concerned.</p> <hr/> <p>3. An organisation i) Requested further clarity about how to comply with rule 8.17.2 which states "Any free entry route</p>	<hr/> <p>1. i) CAP considers that the Principle and Definition at the beginning of this section clarifies the types of promotions subject to these rules, as well as the wording of individual rules.</p> <hr/> <p>2. CAP considers its remit to be clear and that this rule is in line with that remit</p> <hr/> <p>3. i) CAP's present Help Note on Promotions with prizes states that any no-purchase route must be publicised in such a way that it would be likely to</p>
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<p>An individual Three organisations</p> <p>Internal employee</p> <p>CAP</p>	<p>should be explained clearly and prominently”. Queried whether it would be acceptable to enter the required information within the terms and conditions or significant conditions as explained within rule 8.18 or whether this will need to be detailed within the “body copy” of the promotion?</p>	<p>come to the attention of each individual who considers participating.</p>
	<p>ii) Also noted that clarity surrounding free-entry routes is particularly important in relation to promotions in Northern Ireland as the legal requirements are different under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 from the Gambling Act 2005.</p>	<p>ii) CAP considers that the Principle at the beginning of this section places a clear expectation on the promoter to be aware of the different legal requirements under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 and the Gambling Act 2005.</p>
	<p>iii) Suggested additional wording for rule 8.28.9 to expand it to “any intention to use winners <i>or their personal information</i> in post-event publicity”. This would make clear to participants that more than their image may be used, for example their name and image or other information that may make them identifiable.</p>	<p>iii) CAP considers that this proposal is unnecessary as the proposed wording does not prevent use of personal information; it ensures that any intention to use winners in any way is clearly communicated at the outset.</p>
	<p>4. British Naturism: Suggested that rule 8.7 should carry the rider that considerations of harm take precedence over offence. Respondent considered that avoiding causing offence to one group can cause offence to other groups.</p>	<p>4. CAP’s considers that this rule is deliberately principles-based. --That approach provides the ASA the scope to consider complaints about offensive marketing by taking into account the context, medium, audience, product and prevailing standards. Proposed rule 8.7 recognises that marketing communications may be distasteful without breaching the Code, meaning that the ASA must make subjective judgements, on a case-by-case basis, about the</p>

		<p>likelihood of a marketing communication causing either serious or widespread offence.</p> <p>5.</p>
	<p>5. Charity Law Association: Considered the rules to be necessary but:</p> <p>i) Suggested that rule 8.21.1 should apply across the board if the consumer has not in fact won anything, regardless of costs incurred or availability of the prize.</p>	<p>i) CAP considers that these concerns are adequately addressed by 8.2</p> <p>ii) Readers may note that rules in the proposed Code state 'must', for example 'must not mislead'. Rules in the present Code state 'should'. 'Should' might imply that compliance with the Code is voluntary when it is not. The decision to use 'must' does not signify a substantive change; it merely removes ambiguity about the intent of the rules.</p>
	<p>ii) Suggested that rule 8.23 should revert to 'should' instead of 'must' as some complexity will be necessary in some circumstances.</p>	<p>6. CAP considers that the rules are as clear and succinct as possible in such a complex area.</p>
	<p>6. Enable: Suggested that the rules could be clearer and considered it would be helpful to include examples to illustrate each clause</p>	<p>CAP will consider producing guidance on specific rules at a later date, as appropriate</p> <p>7. CAP considers this to be a useful suggestion and has amended rule 8.28.2 for clarity:</p>
	<p>7.</p>	

	<p>9. Independent Healthcare Advisory Services: Suggested that while it considers it inappropriate for promotions for cosmetic surgery to be advertised, proposed that it may be acceptable for non-surgical treatments to be promoted as this may be of benefit to consumers who otherwise would not be able to afford the full cost of the treatment they desire.</p> <p>Respondent noted that this is made clear in its own policy document</p> <p>10. Kraft Foods UK and Ireland: Suggested that the ASA could work with the legislature to bring laws on instant wins/ free prize draws in Northern Ireland into line with those applying in the rest of the UK.</p> <p>11. Office of Fair Trading: Suggested that in order to ensure consistency with the CPRs, it would be appropriate to change</p>	<p>substantive change; it merely removes ambiguity about the intent of the rules.</p> <p>9. CAP avoids referencing other bodies' codes in order to avoid requiring the ASA to adjudicate under an external Code. CAP would expect each industry sector to be aware of the guidelines put in place by its own industry body.</p> <p>CAP considers that all aspects of social responsibility are sufficiently covered in the general rules relating to this section. See proposed rules 8.3, 8.5, 8.6, 8.7.</p> <p>10. It is not within CAP's remit to lobby for legislative change.</p> <p>11. CAP accepts this suggestion and has amended the Definition accordingly</p> <p>12.</p>
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	<p>reference to 'buy-one-get-one-free' offers in definition section to 'two for the price of one'</p> <hr/> <p>12. Redcats (Brands) Ltd: Noted that there may be examples of extra rules that, while reasonable, could influence consumers against buying or participating e.g. a rule relating to the winner participating in publicity. For clarity, the respondent proposes amending the wording to:</p> <p>"the rules must contain no unreasonable conditions that could influence the consumer against making a purchase or participating.."</p> <hr/> <p>13. Alliance Boots, British Retail Consortium, Consumer Policy Group, Sainsbury's supermarkets & Tesco Stores Ltd: Considered rule 8.12 to be impractical and a disproportionate burden on promoters as it would require the promoter to hold additional stocks of alternative products for each promotion.</p> <hr/>	<p>CAP considers that there is no need to add in a qualification here. If the condition to participate in publicity is a significant one, it must be made clear.</p> <hr/> <p>13. CAP considers that this rule does not differ significantly from present rule 30.4.</p> <hr/> <p>CAP considers that there is no evidence to show that this present rule is impractical or unworkable for promoters.</p> <p>CAP considers that its Sales Promotion rules protect consumers from misleading practices and promoters whose reputation is placed at risk by those undertaking that practice. CAP considers that its rules are proportionate and necessary and does not propose to amend this rule.</p> <hr/> <p>14. i) CAP considers that the rules in this section are necessary and proportionate. The Principles and Definition-at the beginning of the section clarify what is covered under these rules, including</p>
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	<p>14. Tesco Stores Ltd: i) Considered this section to be confusing in combining rules for promotional offers with competitions. Suggested that the rules should be split more clearly in this section to cover these different types of promotions.</p> <p>Asked for clarification about whether simple price cut offers and the like are to be governed by these rules, considered that a definition of “sales promotion” should make this clear.</p> <hr/> <p>ii) Respondent considers that rules 8.14-8.17 in particular are more appropriate to competitions but which don't easily fit with price promotions.</p> <hr/> <p>iii) Asked for clarity about the term ‘premium offer’ (in definition); under the proposed wording it could mean an offer available via a premium rate telephone number and/or an offer related to a premium product.</p> <hr/> <p>iv) Noted that in relation to closing dates, greater flexibility is often required for price promotions as they are often subject to high volumes of sales. Also, in some cases stating a promotion end date can put retailers at a commercial disadvantage.</p>	<p>‘money-off offers’.</p> <p>ii) CAP considers that the rules are set out appropriately given that the formats of different types of promotions and competitions often overlap.</p> <hr/> <p>iii) CAP considers this a useful comment and has removed ‘premium offer’ from the definition</p> <hr/> <p>iv) CAP considers that the wording is clear and 8.17.4a offers appropriate flexibility for price promotions</p> <hr/>
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	<p>Respondent noted that in many cases, the requirement for closing dates may not apply to price promotions and that this may be the intention behind clause 8.17.4a but considered the wording of this rule to be unclear and requested that CAP revise the wording so that this requirement is made more certain.</p> <hr style="border-top: 1px dashed black;"/> <p>15. Alliance Boots, British Retail Consortium, Consumer Policy Group and Tesco Stores Ltd: Considered that Rule 8.4 is superfluous as it is illegal to supply alcohol to persons under the age of 18.</p> <hr style="border-top: 1px dashed black;"/> <p>16. Internal CAP employee:</p>	<p>15. The CAP Code and the self-regulatory framework that exists to administer it have been developed to work within and complement legal controls. The UK's legal context allows for and promotes the use of self-regulation as an alternative instrument to statutory regulation and as a proportionate and effective enforcement measure. A clear distinction about jurisdiction, competences and responsibilities is maintained between the ASA and other public authorities.</p> <p>The CAP Code includes rules that give effect to legal provisions; those rules ensure the Code is relevant and they help marketers to satisfy a general requirement of the Code to comply with the law. In practice, the ASA's administration of rules that reflect legal provisions is often sufficiently effective that recourse to statutory regulatory bodies and the courts is considered undesirable and often unnecessary.</p> <p>16. CAP proposes to retain the same wording, on the basis that its intention is clear and that the ASA does not have problems interpreting it in the present Code.</p>
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	<p>Noted that in practice the proposed wording of rule 8.11 could restrict any sales promotion where there is not an unlimited number of promotional items.</p>	<p>In the event of a complaint, the ASA would consider and potentially investigate there had been a significant limit to the number of promotional items available</p>
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