

Annex 7

Race impact assessment

A7.1 In accordance with Race Relations legislation, Ofcom has carried out a race impact assessment on the policy options, having regard to guidelines issued by the Commission for Racial Equality (CRE), which pose the following questions in relation to new policy proposals:

Will the proposed policy involve, or have consequences, for citizen-consumers?

Could these consequences differ according to people's racial group? (e.g. because they have particular needs, experiences or priorities)

Is there any evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?

Is there any evidence that people from some racial groups may have different expectations of the policy in question?

A7.2 Clearly, the policy options discussed in the consultation document are intended to have consequences for citizen-consumers, as they are intended to contribute to a wider exercise to promote better diets and healthier lifestyles. There is no evidence that any of the policy options would discriminate unlawfully, directly or indirectly against people from some racial groups.

A7.3 In fact, there is evidence that the policy options would benefit people from ethnic minorities. Ofcom's review of available research found that children who are of Asian descent are four times more likely to be obese than those who are white, and that women of Black Caribbean and Pakistani descent are at particularly high risk⁶³. Given that people from these ethnic minorities have been shown to be particularly susceptible to obesity, Ofcom believes that the policy options it has set out should have a beneficial impact on children from these groups. As indicated elsewhere in the impact assessment and consultation document, the effect of changes to advertising regulation are likely to be modest in isolation, and will need to be supported by other measures to promote better diets and healthier lifestyles.

A7.4 As regards the possibility that people from some racial groups may have different expectations of the policy options, this is an issue that we shall address in deliberative research with focus groups that will take place during the consultation period. The research will be carried out for Ofcom on an independent basis. The qualitative workshops will contain a mixture of people recruited as part of a random sampling recruitment process. We plan to select locations for the research with high minority ethnic group representation and thus will ensure some coverage from different ethnic

⁶³ Saxena, S., Ambler, G., and Majeed, A. (2004) Ethnic group differences in overweight and obese children and young people in England: a cross sectional survey. *Archives of Disease in Childhood*, 89, pp 30-36. www.fetalneonatal.com/cgi/content/abstract/archdischild;89/1/30. See also House of Commons Health Committee (2004) Obesity Third Report of Session 2003-2004 Volume 1, para 38, p.16. London: The Stationery Office Limited.

groups. Ethnicity will then be noted as part of the analysis process. As such, a mixture of different ethnicities will be included as a matter of course. We have asked that responses from people of ethnic minority backgrounds should be identified, to shed light on whether people from some racial groups may have different attitudes to the regulation of food advertising.

Annex 8

BCAP content rule proposals

The proposed rules below have been drawn up by BCAP to slot directly into the current BCAP Television Advertising Standards Code.

Section 7.2 would replace the existing section 7.2 (Pressure to Purchase) with the new Food & Soft Drink Advertising and Children section. The new Section 8.3 rules build on the existing Section 8.3 rules, and would in practice replace those in the current code. All other sections remain unchanged.

Proposed rules

7.2 FOOD AND SOFT DRINK ADVERTISING AND CHILDREN

Notes:

1. *The rules in 7.2 must be read in conjunction with the other rules in this Code, especially section 8.3, 'Food and Dietary Supplements'. References to food apply also, where relevant, to beverages.*

2. *These definitions apply in rule 7.2:*

- *'Children' refers to persons under 16 years of age:*
 - Pre-school (Band 1)*
 - 5 to 9 years (Band 2)*
 - 10 to 15 years (Band 3)*
- *Licensed Characters - those characters that are borrowed equities and have no historical association with the product.*
- *Equity Brand Characters – those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.*

7.2.1 Diet and lifestyle.

Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children.

Notes:

(1) *This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation.*

(2) *In particular, advertisements should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed.*

(3) *It is important to avoid encouraging or condoning attitudes associated with poor diets, for example, a dislike of green vegetables.*

(4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No advertisement should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(5) Advertisements for food should not encourage inactivity or sedentary pastimes or disparage or ridicule physical activity.

7.2.2 Pressure to purchase

Note: Please see also 7.3 ^[Revised numbering] (Pressure to purchase)

(a) Although children may be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases

Notes:

(1) This extends to behaviour shown: for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.

(2) Phrases such as "Ask Mummy to buy you" are not acceptable.

(b) Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.

(c) Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service.

(d) Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.

(e) Advertisements addressed to children should avoid 'high pressure' and 'hard sell' techniques, i.e. urging children to buy or persuade others to buy. Neither the words used nor the tone of the advertisement should suggest that young viewers are being bullied, cajoled or otherwise put under pressure to acquire the advertised item.

(f) If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

Note:

Products and prices should not be presented in a way that suggests children or their families can easily afford them.

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility and must not be targeted directly at children in band 1 or band 2.

(a) Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

(b) Advertisements should not seem to encourage children to eat or drink a product only to obtain a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.

(c) Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of “Hurry and buy”.

(d) If they feature large pack sizes or promotional offers, e.g. “3 for the price of 2”, advertisements should not encourage children to eat more than they otherwise would.

(e) The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

7.2.4 Use of characters and celebrities

Celebrities and licensed characters popular with children must be used with a due sense of responsibility. They may not be used in advertisements targeted directly at children in band 1 or band 2.

Notes:

(1) Advertisements must not, for example, suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.

(2) This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

(3) Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.

(4) Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc.

8.3 FOOD AND DIETARY SUPPLEMENTS

Notes:

(1) The rules in 8.3 must be read in conjunction with the relevant legislation including the Food Labelling Regulations 1996 (as amended) and especially Schedule 6. They apply to all advertising for food products. If an advertisement is targeted at children, Section 7 of this Code also applies.

(2) Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting bad examples, particularly to children. Advertisements should not, for example, encourage inactivity or sedentary pastimes or disparage or ridicule physical activity.

8.3.1 Accuracy in food advertising

(a) Nutrition claims (eg “full of the goodness of vitamin C”) or health claims (eg “aids a healthy digestion”) must be supported by sound scientific evidence. Advertising must not give a misleading impression of the nutritional or health benefits of the product as a whole and factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim must be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness” and, if a claim relates to taste, that should be made clear, e.g. “It tastes good”, not “It is good”. The scientific meaning of the word “energy”, i.e. calorific value, should not be confused with its colloquial meaning of physical vigour

(b) Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in the advertisement. Claims should be presented clearly and without exaggeration

(c) No nutritional or health claim may be targeted directly at children in band 1

(d) The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit

Notes:

(1) Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both.

(2) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, DEFRA Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid “% fat free” claims (issued November 1999). Appropriate consideration and uniform application of

such guidelines is needed from the relevant pre-clearance and adjudicatory bodies.

(3) Licensees may also find the Joint Health Claims Initiative Code of Practice useful.

8.3.2 Excessive consumption

Advertisements must not encourage or condone excessive consumption of any food

Notes:

(1) Interpretation of this rule should be by reference to generally accepted nutritional advice. It would clearly not be inconsistent with shots of someone enjoying a chocolate bar; it would, however, preclude someone being shown eating whole boxes of chocolates in one sitting.

(2) Portion sizes or quantities of food shown should be suitable for the occasion and the people portrayed, especially if children are involved. Advertisements should not suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(3) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage people to eat more than they otherwise would.

(4) The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.

8.3.3 Comparisons and good dietary practice

Advertisements must not disparage good dietary practice. Comparisons between products must not discourage the selection of options such as fresh fruit and vegetables, which accepted dietary opinion recommends should form a greater part of the average diet

Notes:

(1) Advertisements should not seem to contradict or ignore good dietary practice.

(2) To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.

(3) Food products not intended as substitutes for meals should not be presented as such.

8.3.4 Oral health

Advertisements must not encourage or condone damaging oral health care practices

Note:

For instance, advertisements must not encourage frequent consumption throughout the day, particularly of potentially cariogenic products such as those containing sugar. This rule has children's dental health particularly in mind.

8.3.5 Dietary supplements

(a) Advertisements must not suggest that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition

(b) Advertisements must clearly establish those groups of people likely to benefit from a particular form of supplement

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.