



Ofcom proposal to renew the co-regulatory arrangement for broadcast advertising

Response from the British Heart Foundation
May 2014

The British Heart Foundation (BHF) is the nation's leading heart charity. We are working to achieve our vision of a world in which people do not die prematurely or suffer from cardiovascular disease. In the fight for every heartbeat we fund ground breaking medical research, provide support and care to people living with cardiovascular disease and advocate for improvement in care and services.

Around 30 per cent of children in the UK are overweight or obese.¹ Obese children are more likely to become obese adults, which in turn increases their risk of developing cardiovascular disease. Children today are eating more saturated fat and salt^{2,3} than is recommended. Over time this can lead to increased blood pressure and raised cholesterol levels which are risk factors for heart disease and stroke.⁴ We also know that lifetime eating patterns often start in childhood and adolescence. We believe that parents' current efforts to promote a heart healthy diet among their children is being undermined by loopholes in the regulatory system that means companies can use child friendly techniques to advertise foods high in fat, salt and sugar (HFSS) to children.

Advertising HFSS products to children is a concern for two main reasons. First, children are a vulnerable group that should be protected from advertising of HFSS products. This is because evidence shows that children are unable to critically interpret advertising, and that younger children are not able to discriminate between advertising and other media content.⁵ Second, although it is difficult to isolate the impact of food marketing on childhood nutrition and obesity, as a variety of factors influence what children eat and how physically active they are, there is evidence which demonstrates that food promotion influences children's behaviour in a number of ways, including their preferences, purchase behaviour, and consumption.⁶

We therefore welcome the opportunity to respond to Ofcom's consultation on the co-regulatory arrangements and proposal to renew their ending contract with the Advertising Standards Authority (ASA). We believe that there are a number of amendments required to improve the regulatory system of advertising in the UK, and do not believe that the existing

¹ British Heart Foundation (2013) 'Children and Young People Statistics' <http://www.bhf.org.uk/publications/view-publication.aspx?ps=1002326>

² Food Standards Agency (2007) 'Low Income Diet and Nutrition Survey'

³ Department of Health (2012) 'National Diet and Nutrition Survey: Headline Results from Years 1, 2 and 3 (combined) of the Rolling Programme 2008/09 – 2010/11'

⁴ J.J.He, N.M.Marrero, G.A MacGregor (2007) 'Salt and blood pressure in children and adolescents.' *Journal of Human Hypertension*. doi:10.1038/sj.jhh.1002268 P1-8

⁵ E.g. Young B (2003) 'Does food advertising influence children's food choices?' *International journal of Advertising* 22: 441-459. Hastings et al (2003) 'Review of the research on the effects of food promotion to children.' Food Standards Agency

⁶ Hastings et al (2003) 'Review of the research on the effects of food promotion to children.' Food Standards Agency.

contract should be renewed. For ease we have separated our response into relevant sections of the Memorandum of Understanding (MoU) which governs the relationship between Ofcom and the independent bodies.

10a- Handling and resolution of complaints about advertising content on radio and television

We believe that the current complaints process is not meeting the criteria originally set out in the MoU of: public awareness, transparency and clarity of process and structures. Evidence presented in the Children's Food Campaign '[Through the Looking Glass](#)' report,⁷ which was funded by the BHF, demonstrates that the current system places the onus on small organisations and parents to navigate the incredibly complex system, with little help or assistance.

The report also highlighted that not all judgements of the ASA are held in public. This is problematic not only for transparency of procedures which is at the heart of the MoU but also problematic for industry as other marketers could learn from pitfalls of their competitors in order to produce adverts that are compliant with the regulations. This is further compounded by the fact that complaints can be 'informally resolved' with no additional evidence provided on how the decision was reached. As long as all investigation processes lack clear documented proof on decisions made, Ofcom cannot claim that the co-regulatory agreement is in anyway transparent, or offers clarity of process and structure.

Also highlighted within the report is that the process itself is lengthy, complex and not widely known as an available option by the general public, despite the development of ParentPort. Even if a successful complaint is lodged by a concerned parent, the penalties for the marketer are minimal (see 10b for more information). It is also concerning to see Lord Smith's letter using the number of upheld decisions as a barometer to the success of the system. This does not take into consideration how user friendly, fair and transparent the system is which are vital evaluation measures of the system.

10b Advertising Code setting, Monitoring and Enforcement

Code setting

The BHF does not agree with proposals for Ofcom to retain its oversight function of all Broadcast Committee of Advertising Practice (BCAP) Code changes, whilst BCAP retains the role of producing the Codes. This is for two main reasons.

First, the current BCAP Code is failing to protect children from adverts for HFSS foods. Despite Ofcom regulation preventing HFSS adverts during children's programming evidence comparing the six months prior and post regulation implementation shows that the amount of HFSS adverts that children viewed was unaffected.⁸ This, in part, can be attributed to

⁷ The Children's Food Campaign (2013) '[Through the Looking Glass: A review of the topsy turvy world of the regulations that are supposed to \(but don't\) protect children from online marketing of junk food.](#)'

⁸ Adams, J et al (2012) '[Effect of Restrictions on Television Food Advertising to Children on Exposure to Advertisements for 'Less Healthy' Foods: Repeat Cross Sectional Study.](#)'
<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0031578>

advertisers shifting their marketing spends to ‘adult or family programming,’ which is in accordance to current regulation.

However we also know that children’s viewing habits have shifted, with more children now watching later in the evening, peaking between 8-9pm.⁹ Crucially, this peak viewing time falls within ‘adult or family programming’ and is therefore exempt from regulations.

This means that some of the shows most watched by children, such as *X-Factor*, *Britain’s Got Talent* and *Coronation Street*, are not affected. Recent research from the University of Liverpool, surveyed the adverts that ran during *X-Factor*, *Hollyoaks* and the *Simpsons* during December 2013. These programmes were chosen because they fall within ‘adult programming’ yet are popular with younger viewers. The research found that 22 per cent of adverts advertised food items, including fast-food restaurants and chocolate and confectionary products.¹⁰ Therefore exposing children to marketing that would otherwise be prohibited during ‘children’s programming’.

This clearly shows that the BCAP Code has not been reviewed and revised to ensure it is fit for purpose to clearly protect children from harmful adverts and this should be addressed under the current regulatory review. Crucially, Ofcom’s lack of development on this issue, as the body with overall oversight and responsibility for advertising within the UK should also be reviewed. The system is failing at both levels.

Second; we believe that the vague nature of the BCAP Code is also evidence of the failure of the existing co-regulatory arrangement. For example under the current Code, product placement for HFSS food and drinks is prohibited from children’s programming, however adult programmes again, which are favoured by children, are exempt from this regulation. Similarly, the age at which various marketing techniques can be used are also inconsistent. The Code classes children as below the age of 16, but only prohibits the marketing of HFSS products using licensed characters (such as cartoon characters) and celebrities for pre-school or primary school aged children. The use of brand characters – such as Kellogg’s *Coco the Monkey* or *Tony the Tiger* – is not restricted at all.¹¹

In addition, although the MoU only refers to the BCAP Code, we also want to highlight that the Committee of Advertising Practice (CAP) Code, which the ASA also regulates, for non-broadcast regulation is even vaguer. For example, the Code states that “*Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children*” – but what constitutes ‘condoning and encouraging’ or ‘poor habits’ is left open to interpretation. In 2010 the ASA ruled that a bus stop advertisement for *Kellogg’s Coco Pops* which featured *Coco the Monkey* in a school uniform to encourage children to snack on the high sugar cereal after school was not “socially irresponsible”.¹² We are also concerned that the narrow remit of the CAP Code leaves a number of other marketing techniques – including sponsorship, in-store placement, and product-based marketing

⁹ Ofcom (2013) ‘Children’s and young people’s exposure to alcohol advertising’ <http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/alcohol-advertising/>

¹⁰ Boyland, E and Halford J. (2014) Preliminary research findings (to be published)

¹¹ Broadcast Committee of Advertising Practice TV code. Section 7.2 food and soft drink advertising to children – the use of characters and celebrities

¹² ASA (2010) ‘ASA Adjudication on Kellogg Marketing and Sales Company (UK) Ltd.’ [http://asa.org.uk/Rulings/Adjudications/2010/4/Kellogg-Marketing-and-Sales-Company-\(UK\)-Ltd/TF_ADJ_48325.aspx](http://asa.org.uk/Rulings/Adjudications/2010/4/Kellogg-Marketing-and-Sales-Company-(UK)-Ltd/TF_ADJ_48325.aspx)

techniques such as packaging – completely unregulated, creating significant loopholes in the regulatory framework. As with the broadcast regulations, there is inconsistency in the age of children for which particular marketing techniques can be used

Together the Codes exist to ensure advertising is 'legal, decent, honest and truthful' and the ASA acts to prevent adverts that 'harm or offend.' These definitions are very much open to interpretation and allow the health of viewers to be deprioritised.

Enforcement

The BHF does not believe that the enforcement powers are strong enough to impress on the industry the harm that lax advertising of HFSS foods on children has. In cases where a complaint is upheld the ASA has the authority to pull the advert and ban further use. However due to the lengthy complaints and adjudication process the bought media spend and life of that advert is very likely to have run its course by the time an outcome of the investigation is known. This means that the advertiser has been able to lead with their advert during the slots they originally bought with minimum impact on their business. The harm has already been done, as the audience has been exposed to the advert. We believe that stronger enforcement penalties are required, alongside a quicker adjudication process, to truly have an impact on those who break the advertising Codes. With this in mind we object to the MoU decision to reject consideration for an alternative complaints process for the ASA outlined in section: ***Association with 20-24 Powers of ASA (B) – enforcement of decisions.***

10e Scheduling of Spot Advertising

As detailed in section 10b we are critical of Ofcom's overall performance in failing to instruct that the BCAP Code was brought up to date to reflect the changing viewing habits of children. We, alongside Action on Junk Food, a coalition of over forty organisations, believe that a 9pm watershed for all HFSS adverts should be enforced for all advertising to best protect children.

10g Interactive and Other New Forms of Advertising

We would welcome clarity as to why the co-regulatory arrangements for the regulation of advertising included in On Demand Programme Services is separate to the Memorandum of Understanding regarding the renewal of ASA's contract as it is our understanding that ASA's role also covers On Demand Services.

12-13 Funding of the System

We believe that a co-regulatory system where the advertising industry effectively writes, maintains, enforces and pays for the system is not appropriate and presents a conflict of interest for all parties involved between profit, industry development and a commitment to responsible marketing.

The interdependencies of the ASA, BCAP, CAP and Ofcom are complex and deep. Our main concern is that the ASA is solely funded by a voluntary levy on advertising spend. We understand that this is collected by an arm's length body. However, we believe it is

inappropriate that the ASA, who is responsible for regulating the system and safeguarding the audience, is enabled to do so by the industry it regulates. It is reasonable to suggest that this could impact on the ASA rulings, that if it is critical of industry it is essentially critiquing the people who fund it.

The BHF conducted a poll in 2013 which found that 48 per cent of respondents did not trust the food industry to responsibly market HFSS products to children.¹³ It therefore seems wrong that the industry itself should be given the responsibility to write the Codes that govern advertising practice. As we have illustrated the Codes are vague and open to interpretation, favouring the interest of industry rather than prioritising the health of children.

The British Heart Foundation is therefore calling on the Government to establish an alternative independent watchdog to develop and enforce marketing regulation in the UK.

¹³ British Heart Foundation (2013) *Online survey May 2013, sample size 2,057. Results have been weighted to be representative of all GB adults.*