

Bite Back 2030 response to the consultation: Regulation of advertising of less healthy food and drink

Answer to question 1:

Yes, they reflect DHSC's recommendations. We are very supportive of TV advertising for identifiable less healthy food or drink products not being shown between 5.30am and 9.00pm. We are concerned about the definition of 'identifiable food and drink product', more below.

Answer to question 2:

Yes, they reflect DHSC's recommendations. We are very supportive of programming (including a channel) not being sponsored by an identifiable less healthy food or drink product between 5.30 am and 9.00 pm. We are concerned about the definition of 'identifiable food and drink product' for sponsorship, more below.

Answer to question 3:

We agree with this proposal for the short-term. To be able to fulfil their roles, Ofcom and the ASA require clear and unambiguous guidance that is informed by evidence. They are already required to submit annual reports to DCMS but this existing process could be improved to provide transparent reporting on the number of complaints, investigations and resolutions. The ASA's role should be consistent with Ofcom in terms of enforcing and reporting breaches of the regulations. The ASA should also enable reporting on complaints, investigations and resolutions, and on emerging online platforms that may be exempt or out of scope from the restrictions. It is critical that Ofcom, as the backstop regulator, has full oversight of all complaints submitted to the ASA.

The ASA is currently based on complaints, and there is a need for a more proactive research role, but as the ASA will be given full statutory powers we understand this is a strong deterrent from non-compliance. We understand that this will be explained in DCMS's Online Safety Bill consultation.

We therefore support enforcement that includes regular proactive monitoring to identify non-compliance - the online space is huge with a massive number of ads, and digital marketing campaigns have a short life span; fines for repeat breaches; reporting of all breaches to Ofcom, and the responsible government department should hold a record of them; full and public transparency on all complaints, investigations and resolutions.

We are concerned that the ASA has a history of not upholding complaints for ads that clearly targeted children. For example:

- a complaint filed by Sustain about a website for cricket tournament The Hundred and KP Snacks and its brands, seen in August 2021
- a complaint filed by the Obesity Health Alliance and Children’s Food Campaign in 2018 about the Cadbury’s egg hunt website
- a complaint filed by the Obesity Health Alliance in 2018 about a Doritos advert that was shown before a gaming video watched by an under 16 on YouTube.

Furthermore, the ASA rarely fully investigates HFSS advertising complaints, choosing instead to ‘informally resolve’ them. For example:

- A20-1061392 Kelloggs UK: A complaint was made regarding a pre-roll ad for Pringles snacks immediately preceding an episode of Joe Wicks’ school child morning workout “PE with Joe”. Kelloggs UK said Joe Wicks’ channel has been removed from their media list, and the ASA informally resolved the case, without any further investigation into how the company works with its online media buying agencies to identify and remove channels with large appeal to children.
- A19-1044689 McDonald’s Big Tasty with Bacon: An advert on a telephone box outside a secondary school was reported in November 2019. The advertisers told ASA that the ad had been removed, and the ASA considered the case informally resolved. However local residents reported it was still present two weeks later; it was then removed, but as it was considered informally resolved none of the case information was published.

We would want to see a requirement for ASA to regularly publish full details of complaints received and how they have been resolved. It is vital that full details are made public even on complaints that are informally resolved so ASA’s approach to regulation is transparent and can be scrutinised by stakeholders.

The ASA should also undertake avatar research on a more regular basis. Its 2021 monitoring and enforcement report, *Protecting Children in Mixed-age Online Media*, assessed the distribution of ads for alcohol, gambling and HFSS products on websites and YouTube channels where adults comprise over 75% of the overall audience¹. The ASA called on advertisers to make better use of targeting tools to limit children’s exposure to dynamically served age-restricted ads on mixed-age sites.

The ASA’s assessment of online advertisers’ compliance with the CAP Code found that 159 age-restricted ads broke the advertising rules, 35 advertisers placed age-restricted ads in 34 websites and 5 YouTube channels media aimed at or attracting a disproportionately

¹ <https://www.asa.org.uk/static/6d5593da-4b5e-43c4-82f97598dac03019/Mixed-Age-Avatar-Report.pdf>

large child audience².

Our additional comments:

Bite Back 2030 is a youth-led movement campaigning to transform the food system to put child health first. Our movement involves 100 incredible young campaigners based across England, alongside 3,000 young people from schools and youth clubs.

The Government, food and drink companies, and advertisers must make it easier for all young people to eat healthily. Advertising has an overwhelming influence on young people, and the introduction of these restrictions is critical. In the words of one young campaigner: "Young people are often pressured to make changes to our diet rather than initiatives that address the aggressive marketing and availability of junk food to children."

We welcome these regulations but we also want companies to follow the spirit as well as the letter of the guidance - we hope that they will be truly supportive of child health and not spend their resources on finding ways to circumvent the rules. New (unpublished and confidential) research commissioned by Public Health England and carried out by Bite Back 2030 found that companies find ways to engage young people through brand adverts and ads on owned media. For example, one participant aged 13 to 15 said: "...seeing it [the logo] does make me crave the food... For example, seeing the Coca Cola brand would make me want to have Coke."

Another young person aged 16 to 18 said: "Branding works and companies know that - they don't want you to buy any chicken wrap, they want you to buy their wrap. Everyone has their own favourite at these places so it doesn't really matter which specific item they put in the ad." The research also included a quantitative survey of 1,000 14-19-year-olds - 6 in 10 respondents reported having a food and drink brand (e.g. McDonald's) or food delivery platform (e.g. Just Eat) app installed on their phone. In addition to facilitating purchasing, these apps represent a direct communication line between brands and their users, enabling highly personalised reminders for products and discounts, at targeted times. For example a young person aged 16-18 said she received an "email from Domino's. I haven't ordered from them in months. It's a 50% discount when I collect. I kinda want to order because it's so discounted."

We welcome the opportunity to feed into this consultation. We were extremely disappointed by the delays to this regulation, a decision that will significantly impact the government's own goals to protect child health. As young campaigner Jacob said: "As young people, we are bombarded by junk food adverts every day and there really is no escape from them. Young people should be able to live free from pressure from food and

² <https://www.asa.org.uk/news/protecting-children-online.html>

drink companies. Young people want to be healthy. I want to be healthy. But when all we are promoted is junk, it makes it so much harder. There is no debate that you shouldn't promote junk food to young people. Even the food companies admit that themselves."

We are a member of the Obesity Health Alliance and support the comments made in their submission, which are copied below.

Independent security is essential: In the long-term we would like to see a comprehensive new approach to regulation of all types of harmful marketing. However, we would not want the need to set up a new body to act as a barrier to bringing in the restrictions by the end of 2025 as per the Government's commitment.

Parity between online and broadcast: Whilst the liability differs between TV (broadcasters are liable) and online (advertisers are liable), which follows the existing enforcement framework, it is important that there is a level-playing field of consequences for non-compliance on both online and broadcast media.

Defining Brand vs product sponsorship: Experience from the Transport for London restrictions regarding deciding the line between brand and product-identifiable sponsorship has shown this to be not clear cut.

Defining brands as synonymous with less healthy products: Less healthy products can be promoted both directly, by including them in an advertisement, and indirectly, through using brands or branding that is synonymous with a specific less healthy product. This can be through product related branding or, more broadly, company or corporate branding.

CAP and BCAP acknowledge that differentiating a less healthy product advertisement from a brand advertisement is not always easy, it has therefore published guidance. We have serious concerns about leaving the frontline regulator to define when a brand is considered synonymous with less healthy products. The existing guidance from the Advertising Standards Authority (ASA) is vague and lists scenarios rather than providing an objective definition of an HFSS brand. The guidance states, "...it is for the ASA to decide on a case by-case basis whether an advertisement has the effect of promoting an HFSS product and should therefore be subject to the HFSS product advertising rules." Given the sheer number of brands, it is completely unrealistic for whether restrictions should apply to individual social media platforms to be decided on a case-by-case basis. Furthermore, we have concerns about the impartiality of the ASA to make an objective judgement on whether a brand is synonymous with HFSS. It is our view that responsibility for defining a brand as HFSS should not rest with an industry-funded regulator. In the first instance, we

recommend that both Ofcom and ASA collaborate with the experienced nutrition teams at OHID/DHSC to decide on what is product-identifiable.

There is huge public support for these measures. Recent polling commissioned by OHA and Diabetes UK showed that 71% of people would support a policy that would mean children only see healthier food and drinks adverts on tv. Just 7% of people said they wouldn't support this policy. 71% of people agreed that it is important to protect children from HFSS advertising online (with only 6% disagreeing with this statement)³

Even small calorie reductions across the population are predicted to have large impacts on preventing childhood obesity⁴. Childhood obesity rates have increased dramatically in the last 10 years and are now significantly above pre-pandemic levels. December 2022 data indicates that obesity prevalence amongst children in England was 10.1% for Reception-aged children, rising to 23.4% for children aged 10-11 (Year 6)⁵. 31.3% of Year 6 children living in the most deprived areas were living with obesity, compared to 13.5% of those living in the least deprived areas⁶.

Children's exposure to junk food advertising is substantially underestimated. The IA uses a measure of children's exposure to junk food adverts calculated by Kantar⁷. Due to the lack of transparency and independent data for adverts served online, this analysis relied on estimates and extrapolations. An independent analysis of the methodology used highlighted a significant flaw in that it relies on advertising spend data as a proxy for the reach of that advertising⁸. We understand that only a very limited set of websites are included in the analysis, and reporting only includes display advertising, not social or pay per click activity. This is notoriously unreliable in digital marketing as brands can significantly boost the reach of their paid advertising via social media engagement. Children's exposure to online advertising is likely to be substantially higher, meaning removing it will have greater benefits than previously estimated.

³ YouGov Plc. Total sample size was 5,232 adults. Fieldwork was undertaken between 7th - 11th December 2022.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800675/Calories_Evidence_Document.pdf

⁵ <https://www.gov.uk/government/statistics/obesity-profile-december-2022-update/obesity-profile-statistical-commentary-december-2022#:~:text=Interpreting%20the%20data,-Prevalence%20of%20overweight text=In%20England%2C%209.9%25%20of%20children,lower%20tier%20local%20authority%20level>

⁶ <https://digital.nhs.uk/data-and-information/publications/statistical/national-child-measurement-programme/2021-22-school-year>

⁷ <https://www.gov.uk/government/consultations/total-restriction-of-online-advertising-for-products-high-in-fat-sugar-and-salt-hfss/evidence-note>

⁸ Tatlow-Golden, M., & Parker, D. (2020). The Devil is in the Detail: Challenging the UK Department of Health's 2019 Impact Assessment of the Extent of Online Marketing of Unhealthy Foods to Children. *International journal of environmental research and public health*, 17(19), 7231. <https://doi.org/10.3390/ijerph17197231>

Research shows children with overweight and obesity consume around 45 kcals more than their peers when they see junk food advertising. The IA does not take this into account, meaning the benefits to children with excess weight are significantly underestimated⁹. Children from lower socio-economic groups tend to watch more TV and spend more time online and are also more likely to have a weight classed as overweight or obese than their more affluent peers¹⁰.

The impact of the restrictions will be far bigger than stated in the children who already have obesity and those from the most deprived groups – i.e. those that need the most protection from junk food advertising.

This policy will have a more positive effect on people from lower socio-economic backgrounds who are more likely to have excess weight. According to the latest data from the National Childhood Measurement Programme, obesity prevalence for children living in the most deprived areas was more than double that of those living in the least deprived areas for both reception and year 6¹¹.

Research from Cancer Research UK found young people from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to young people from better-off families¹². A systematic review found children from minority and socio-economically disadvantaged backgrounds are disproportionately exposed to unhealthy food advertising¹³. This increased exposure, combined with their already recognised greater risk of unhealthy weight outcomes, suggests that they would potentially have the most to gain from regulation designed to reduce junk food advert exposure.

Even a one-off exposure to food advertising will increase children's food intake by around 30 to 50 calories¹⁴. This is important because research has shown that an energy gap of only about 69–77 kcal per day over a number of years can make the difference between

⁹ Russell SJ, Croker H, Viner RM. (2019) The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis. *Obes Rev* ;20(4):554–568

¹⁰ <https://www.gov.uk/government/statistics/obesity-profile-december-2022-update/obesity-profile-statistical-commentary-december-2022#:~:text=Interpreting%20the%20data,-Prevalence%20of%20overweight text=In%20England%2C%209.9%25%20of%20children,lower%20tier%20local%20authority%20level>

¹¹ <https://www.gov.uk/government/statistics/obesity-profile-december-2022-update/obesity-profile-statistical-commentary-december-2022#:~:text=Interpreting%20the%20data,-Prevalence%20of%20overweight text=In%20England%2C%209.9%25%20of%20children,lower%20tier%20local%20authority%20level>

¹² https://www.cancerresearchuk.org/sites/default/files/a_prime_time_for_action.pdf

¹³ Backholer, K, Gupta, A, Zorbas, C, et al. Differential exposure to, and potential impact of, unhealthy advertising to children by socio-economic and ethnic groups: A systematic review of the evidence. *Obesity Reviews*. 2020; 1–20

¹⁴ Sadeghirad B, et al. 2016. Influence of unhealthy food and beverage marketing on children's dietary intake and preference: a systematic review and meta-analysis of randomized trials. *Obesity Reviews*, 17: 945–959. <https://onlinelibrary.wiley.com/doi/10.1111/obr.12445>

normal weight and overweight in young children¹⁵. Indeed, the UK Government's own figures suggest that implementing the HFSS advertising restrictions could reduce the number of children with obesity by more than 20,000¹⁶.

The estimate is based on a narrow measure of impact on children's food consumption. Advertising works in multiple ways, both in the short and longer-term. The impact assessment calculation is based on highly credible evidence showing the relationship between seeing advertising and immediate food consumption – watching just 4.4 minutes leads to eating an additional 60 kcals¹⁷. This is important, given it takes as little as 46 excess calories each day for a child to develop overweight or obesity¹⁸.

But advertising also has other equally important effects that influence food consumption in the longer-term. It increases product and brand awareness and builds positive attitudes towards these brands and products^{19,20}. The advertising we see influences our dietary norms²¹. For example, regularly seeing unhealthy food advertising can lead us to think eating unhealthy food is part of the 'average' diet and large portions and high levels of snacking are normal. Restrictions on junk food advertising have the potential to change long-term food consumption, meaning the benefits are currently under-stated²².

This kind of advertising is not designed to drive direct sales and should not be measured in that way. What it does is to create the food culture which enables sales. From snacking, to rewarding, to the need for convenience are all constructs of the advertising industry to create an environment for sales²³. There has been massive growth in sales of many high sugar products since 2015, likely to be as a result of extensive advertising. Large companies (over 250 employees) have been doing very well, commercially.

¹⁵ van den Berg SW, et al. 2011. Quantification of the energy gap in young overweight children. The PIAMA birth cohort study. *BMC Public Health* 11, 326. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-11-326>

¹⁶ <https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar/outcome/introducing-further-advertising-restrictions-on-tv-and-online-for-products-high-in-fat-salt-and-sugar-government-response>

¹⁷ Russell SJ, Croker H, Viner RM. (2019) The effect of screen advertising on children's dietary intake: A systematic review and meta-analysis. *Obes Rev* ;20(4):554-568

¹⁸ Plachta-Danielzik S, Landsberg B, Bosy-Westphal A, Johannsen M, Lange D, Muller M. (2008) Energy gain and energy gap in normal weight children: longitudinal data of the KOPS. *Obesity (Silver Spring)*, 16(4)

¹⁹ Smith R, Kelly B, Yeatman H, Boyland E. (2019) Food marketing influences children's attitudes, preferences and consumption: A systematic critical review. *Nutrients*;11(4):875

²⁰ Kelly B, King, MPsy L, Chapman, MND K, Boyland E, Bauman AE, Baur LA. (2015) A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *American Journal of Public Health*;105(4):e86-95

²¹ Cairns G. (2019) A critical review of evidence on the sociocultural impacts of food marketing and policy implications. *Appetite*. 1;136:193-207

²² Simmonds M, Llewellyn A, Owen CG, Woolacott N. Predicting adult obesity from childhood obesity: a systematic review and meta-analysis. *Obes Rev*. 2016 Feb;17(2):95-107

²³ <https://www.sciencedirect.com/science/article/abs/pii/S0195666318307803>

Brands who wish to continue advertising their brands have many options open to them. This includes reformulating their products, shifting their advertising to post 9pm or advertising alternative non-HFSS products in their portfolio. There is clear evidence that industry has made progress in preparing for the regulations to come into force by product reformulation and range innovation to come into compliance. These delays (and the potential for even further changes to this policy) not only provide further uncertainty to industry, they also undermine the positive steps taken by progressive retailers to improve health and meet ethical responsibilities.

Research by Cancer Research UK found that over half (54%) of brands advertising HFSS products on TV between 6pm and 9pm had an alternative non-HFSS product which could be advertised instead²⁴. Cancer Research UK research also found “The majority of HFSS products (84%) [looked at in a study of 63 HFSS brands] had an alternative non-HFSS product from the same brand, master brand, parent company, or licence holder company brand portfolio that could be substituted in advertising when restrictions are implemented across TV and online²⁵. This figure does not include companies promoting a service or a message rather than a product, such as Deliveroo or Just Eat, who could easily feature a non-HFSS product in their adverts. When including brands whose parent company own a non-HFSS brand, or brand with non-HFSS products, this rises to over 80%.

Nesta ran a project with young people aged 13-16 to analyse their food and drink marketing exposure²⁶. They found:

- Of the 4,879 food and drink adverts collected, over 70% were deemed unhealthy.
- Young people in lower income groups reported about 50% more examples of unhealthy food and drink marketing than those in higher income groups.
- 65 % of teenagers agreed that the government should take action to ban online marketing.
- 80% of participants agreed that food and drink marketing has a great influence on eating and drinking habits.
- more than 60% of the unhealthy marketing that young people reported seeing in this study was paid-for product advertising

The existing rules do not go far enough. They restrict high fat, sugar and salt (HFSS) food advertising in media of obvious appeal to children or where more than 25% of the

²⁴ Cancer Research UK analysis of Nielsen data for on linear television channels of ITV1, Channel 4, Channel 5 and Sky One in the month of May 2018

²⁵ https://www.cancerresearchuk.org/sites/default/files/cruk_uk_leading_brand_product_analysis.pdf

²⁶

https://media.nesta.org.uk/documents/Online_food_and_drink_marketing_to_young_people_v4_MP9FMYi.pdf

audience is under 16 years old. 'Less healthy' food and drink advertising featured in prime time evening spots, on a YouTube channel, or by a social media influencer popular with both adults and children, can lead to large numbers of children being exposed without breaching the current threshold; for example, if an online video is watched by 10 million people, a breach does not occur until more than 2.5 million children have seen it.

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