

# CAP and BCAP regulatory statement on the sexual portrayal of under-18s in advertising

Committee of Advertising Practice and Broadcast Committee of Advertising Practice's new rules on the sexual portrayal of under-18s in advertising.



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## 1. Summary

Following public consultation, the Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code), and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (the BCAP Code), are introducing new rules prohibiting the sexual portrayal or sexual representation of under-18s (or those who appear to be under 18) in advertising.

CAP and BCAP consider that the new rules represent a necessary and proportionate strengthening of existing rules to protect the welfare of under-18s taking into account links between premature sexualisation and harm, alongside national and international measures prohibiting certain types of sexual depiction of under-18s. A significant majority of respondents representing a cross-section of industry and charities supported the proposals.

The rules address the potential for some adults to view under-18s in general as sexual beings and for some under-18s to be pressurised to view themselves as sexual beings. They also address the protection of the individual models featured in advertising.

The rules, which take effect from **2 January 2018**, are as follows:

- New CAP Code rule:

*4.6 Marketing communications must not portray or represent anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to marketing communications whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.*

- New BCAP Code rule to replace rule 5.5:

*4.4 Advertisements must not portray or represent anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to advertisements whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.*

## 2. CAP and BCAP's decision to consult

### 2.1 The current position

BCAP rule 5.5 provides that:

*Advertisements must not portray or represent children in a sexual way.*

Under section 5 of the BCAP Code (and III.i. of the Introduction to the CAP Code), “a child is anyone under 16”. There is no equivalent CAP Code rule to BCAP rule 5.5. BCAP rule 5.5 is a legacy provision which pre-dates the regulation of broadcast advertising by the ASA/BCAP; CAP and BCAP are not aware of any available information which sets out the policy rationale for the rule's introduction. However, CAP and BCAP consider it is reasonable to infer that the ban on portraying under-16s in a sexual way might have derived from the fact that portraying under-16s in a sexual way is likely to be objectionable to prevailing standards in society and might be depicting unlawful activity

The CAP Code and the BCAP Code offer a range of protections for individuals of various age-related groups which ensure that marketing communications do not do anything that is likely to result in harm. The Codes recognise in several sections that protections are afforded to people at different ages as their credulity, experience and vulnerability changes. However, in areas where there is not a specific rule but the ASA nonetheless considers that a marketing communication is irresponsible or harmful to an individual of any age, it currently has the freedom to uphold under BCAP rule 1.2 and CAP rule 1.3 which require marketers to prepare their marketing communications with a sense of responsibility to society. So, it is open to the ASA to uphold complaints about advertising which portrays over-15s in a sexual way but such advertising would not *automatically* breach the Codes; similarly, it is open to the ASA to uphold complaints about non-broadcast advertising that portrays under-16s in a sexual way, despite there being no express rule to this effect.

For non-broadcast ads, the ASA is not obliged to uphold complaints about sexual portrayal purely on the basis of the age of the people featured in the ads. The ASA would look at the degree of sexualisation and other factors: a youthful appearance would be one factor that would be taken into account in assessing the overall impression of the ad; other factors, such as a vulnerable appearance or suggestion of coercion to be in a certain pose or act in a certain way, would be taken into account. For broadcast ads, the same approach would be taken except in cases where the person featured was, or appeared to be, under 16: such ads would automatically breach BCAP rule 5.5.

### 2.2 Decision to consult

CAP and BCAP consider that premature sexualisation and its links to harm (including findings by two significant Government-commissioned independent reviews<sup>1</sup>), when considered alongside national and international measures prohibiting certain types of sexual depiction of under-18s mean that the new rules are a necessary and proportionate strengthening of existing rules to protect the welfare of under-18s. CAP and BCAP's decision was based on the potential for some adults to view under-18s in general as sexual

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<sup>1</sup> Reg Bailey's *Letting Children Be Children, Report of an Independent Review of the Commercialisation and Sexualisation of Childhood 2011* (the Bailey Review) and Linda Papadopoulos's *Sexualisation of Young People Review 2010* (the Papadopoulos Review)

beings or the potential for under-18s to be pressurised to view themselves as sexual beings. It was also concerned with the protection of the individual models featured in advertising.

The ASA already has the interpretive power to deal with inappropriate and sexualised images of 16 and 17-year-olds, but without a specific age-related prohibition, advertisers have no explicit signal not to do this and no certainty as to what images are likely to be acceptable (an account of the ASA's casework in this area can be found in section 4.3 of the consultation document). The new rules will allow CAP and BCAP to provide adequate protection to vulnerable people while ensuring that advertisers have greater certainty on the types of imagery that they may include in their advertising without running the risk of regulatory intervention. An exemption for ads promoting the welfare of under-18s or aimed at preventing harm to them has been included to allow the ASA the discretion to ensure that responsible advertising does not fall foul of the rules. An example of this type of ad would be an ad that seeks to promote sexual health in 16 or 17-year-olds.

CAP and BCAP also based their decision to consult on wider legal provisions relating to the sexual offences involving children, for example the law on indecent imagery. While acknowledging the law's focus is not on images in advertising, CAP and BCAP consider that introducing express protection for 16 and 17-year-olds from sexual portrayal in advertising mirrors the law in this area more closely than if they were to provide express protection for under-16s only.

Section 5 of CAP and BCAP's consultation document sets out the full basis for their decision to consult.

### 3. Consultation outcome: new rules

The new rules mean that where the ASA receives complaints that under-18s have been portrayed in a sexual way ads, the degree of sexualisation or any aggravating factors, such as vulnerability or coercion will not be assessed: any sexual portrayal – however mild – of someone under 18 will automatically breach the Codes. The ASA’s existing approach to assessing whether imagery is sexual is set out in Annex 1 of the consultation document. It should be noted that the rules contain an exemption for ads promoting the welfare of under-18s or aimed at preventing harm to them has been included to allow the ASA the discretion to ensure that responsible advertising does not fall foul of the rules. An example of this type of ad would be an ad that seeks to promote sexual health in 16 or 17-year-olds.

In light of the reasons for the consultation proposal set out above, and the [evaluation](#) of the 11 consultation responses received, which contained significant support for the proposal from a cross-section of industry and charities, CAP and BCAP are introducing new rules, which take effect from **2 January 2018**, and which can be described as follows:

- New CAP Code rule in Section 4 (“Harm and offence”):

*4.6 Marketing communications must not portray or represent anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to marketing communications whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.*

- Relocation of existing BCAP Code rule 5.5 to Section 4 (“Harm and offence”) amended in the following way:

*4.4 Advertisements must not portray or represent ~~children~~ anyone who is, or seems to be, under 18 in a sexual way. However, this rule does not apply to advertisements whose principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.*

## Contact us

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

Telephone: 020 7492 2200  
Textphone: 020 7242 8159  
Email: [enquiries@cap.org.uk](mailto:enquiries@cap.org.uk)

[www.cap.org.uk](http://www.cap.org.uk)

 Follow us: [@CAP\\_UK](https://twitter.com/CAP_UK)