

The Future Regulation of Broadcast Advertising

A consultation paper from Ofcom

January 2004

About the National Family and Parenting Institute

The National Family and Parenting Institute is an independent charity set up to enhance the quality of family life, by encouraging families and parents to ask for help when they need it, by ensuring they can find the right information and advice and by influencing public policy to make society more family friendly.

The NFPI campaigns to make Britain a better place to raise a family, and in October 2003, we launched the **Family Friendly Campaign**. As part of that campaign, we asked parents what made their family life harder than it needed to be: what worried them and how they felt about raising children in twenty-first century Britain.

84% of parents thought that companies targeted their children too much with marketing.

There was remarkable agreement across gender, social class, size of family and age of children.

Following further in-depth discussions with parents, the NFPI is about to publish a report, **Hard sell, soft targets?** The report highlights parents' concerns about marketing to children, and makes recommendations. The relevant recommendations are listed below:

- **Advertising to under-5s should be banned during TV programmes**
- **Advertising junk food should be banned during children's TV**
- **Research should be commissioned on the cumulative effect of blocks of adverts re-occurring frequently on children's television to ascertain whether codes of practice need to be amended**
- **Options to bring together all the broad, strategic issues to do with marketing to children should be investigated. There is a need for a new or existing organisation to act as a watchdog on behalf of parents and children. Its remit should cover all aspects of marketing, and it should work with the industry to develop guidelines and good practice.**

The discussions with parents and these recommendations form the basis of our response to the consultation document. Where relevant, we have included information from the consultation with parents in our replies to the different questions raised in the document.

Introduction

TV advertising and marketing: the parents' view

- Parents said that they felt their children were bombarded with TV adverts, particularly after school and on Saturday and Sunday mornings.

- Parents have noticed that advertising is targeting children at a younger age, and feel that younger children are more susceptible to advertising than their older children.
- Parents were aware and anxious about the growth of other forms of marketing. They knew that their children saw advertising on the mobile phones, text message and the internet, but felt uninformed about those forms of communication.
- Parents felt it was their responsibility to exercise restraint on their children's demands, but few believed that they could reduce their child's exposure to advertising.
- Parents were unsure about regulating TV advertising and other marketing. They felt uninformed, and none of them displayed any knowledge of the existing system of regulation.

However, some tentative support emerged for some specifically and carefully directed controls:

- *Controls by subject area:* controls or a ban on child-oriented promotion of snack and convenience foods.
- *Controls by time of day:* there was support for limiting the amount of advertising in key periods, particularly Saturday morning and after-school.
- *Controls by volume:* parents favoured a control of the number of showings of any particular advert or campaign.
- *Controls by creative content:* parents wanted more stringent controls used when demonstrating particular products, for example, action toys to avoid disappointing or misleading children.

Specific consultation questions

The benefits or drawbacks of co-regulation

As the consultation paper states, there have been concerns about the possible detrimental effects of television advertising since commercial broadcasting started in the 1950s. The industry has been subject to statutory regulation since that time. At that time, there were just four hours a week of children's and young people television. Nowadays, there are over 104 hours of children's television a week, with a concomitant growth in exposure to advertising. The NFPI is concerned that at a time of huge growth of broadcast advertising, the regulatory regime is losing its statutory basis and opting instead for a "light touch" approach. We are particularly concerned about the effects on children and families of any relaxation in the current system; indeed

there is a strong argument that the current system needs to be more responsive to research on the effects of advertising on children and the need to take action to mitigate those effects.

The benefits of co-regulation to consumers are outlined in the paper as:

- Less confusion to consumers about accountability through the creation of a one-stop shop; and
- A better complaints process because industry will be able to speak directly to consumers.

It is, of course, a good idea to have a simplified and transparent system of complaints like a one-stop shop. There is obvious benefit in ensuring consistency of judgements and policy across all media and a one-stop shop can fill in the current gaps between broadcast and non-broadcast, and ensure that new technologies are included. But that system can be put in place under a co-regulatory or under our current system. A one-stop shop is not an integral part of co-regulation, simply a consequence of bringing together different media.

Industry will find it easier to speak to consumers if consumers are represented at the heart of the system. The consultation paper refers to research and consultation with stakeholders, which is useful and important. However consultation can only allow responses to questions raised, and does not allow the consumer to take a proactive role. The benefits of co-regulation should not only be seen in terms of making life simpler for consumers but as an opportunity to fully involve different consumer groups in decisions about regulating advertising.

Co-regulation could work effectively, if there is a commitment by Ofcom to a robust and representative system, which can be seen by all – industry, users and other stakeholders – as fair and transparent. However as the proposals stand, the benefit to the industry is clear enough but there appear to be few benefits mentioned for the consumer.

The NFPI strongly recommends that Ofcom ensure lay representation and involvement in any proposed co-regulatory framework, including consumer representation on the code development and review committees.

Our consultation with parents revealed that parents have little trust in the industry's willingness to regulate itself. There was a belief that advertisers and marketers are continually pushing at the boundaries and have little interest in a wider view of children's welfare or the social good.

"They'll (marketing agencies) find another way, (if there was more regulation), they'll do it through the internet or mobile phones."

"I'm not sure that there should be no advertising at all, but it is difficult, but I feel that it is too hyped. I feel that the country, the community, I don't know,

has a duty to sometimes portray a different message, which is, you know, what it's all about rather than having another car with a computer on it, or whatever it is."

"They tempt you with things that maybe you can't afford or maybe that they don't want you to keep for long. In modern society they do not want you to buy something and keep it for more than five year. They want you to buy something and replace it."

A regulatory system which places more power and control in the hands of the industry may not reassure parents that advertisers have their best interests at heart, or inspire their trust in its operation.

Can these proposals be as effective, timely and respected as the current statutory system?

The NFPI is particularly concerned about the proposal to transfer Code ownership to the industry. Whilst the consultation paper proposes public consultation and regular meetings with Ofcom, we believe that the present proposals do not offer enough safeguards and protection to parents and other consumers, nor do they offer any representation to consumer groups.

There must be concern that codes drawn up solely by the advertising industry with little or no involvement by consumer groups will fail to address some of the more difficult decisions about the public interest. The industry may, and has, argued that it is against its own interest not to respond to public concern by amending the codes; however it is unrealistic to believe that the advertising industry will voluntarily impose more controls on its own activities when there are examples from both the past and the present of its reluctance to act.

The current debate on food advertising to children is a good example. Increasing numbers of health and academics organisations are advocating stricter controls, for example:

- The Food Standards Agency's recent research concluded that food advertised to children is less healthy than the recommended diet and food promotion is having an effect, particularly on children's food preferences, purchase behaviour and consumption.
- The World Health Organisation has called for more stringent codes of practice.
- The International Obesity Task Force has called for an advertising ban on inappropriate food and drinks.
- The chief Medical Officer has called for the use of the 'precautionary principle' in relation to food advertising, which is defined as "when an activity raises threats of harm to human health or the environment, precautionary measure should be taken even if some cause and effect relationships are not fully established scientifically".

Public opinion is swinging behind greater controls. In a recent poll, a majority of adults wanted food advertising banned during children's TV, and a MP has introduced a Bill to ban advertising during pre-school children's TV that features food and drunk high in fat, sat and sugar.

Yet, the response by the industry to date is to deny any need for further controls. The arguments advanced are:

- Food is not the reason so many children are overweight and unfit; far more needs to be done to get children exercising
- A ban on food advertising would reduce the money available to make children's programmes on TV
- The industry already adheres to a strict code of practice
- It's up to parents to monitor and control their eating habits.

The Secretary of State has now asked Ofcom to review its code, and the consultation paper states that it would fall to ASA to implement public policy requirements where no statutory requirements exist, but where there are strong government/policy considerations. Where the Secretary of State has made a directive, it is up to Ofcom to ensure that the ASA has properly reflected that directive.

It is very unlikely that the Secretary of State will make many such directives; it is likely to occur as a last resort or in the event of a major change in public policy. However there will be many more occasions when the Codes may need amending or tightening up to reflect changes in policy and public opinion. There does not appear to be any mechanism for Ofcom to require BCAP to review and amend the Code. Ofcom's responsibilities appear to be simply to approve (and presumably veto) changes to the codes. Ofcom has the power to suggest, but not insist on change.

The NFPI would urge that Ofcom retains a power to require BCAP to review codes in the light of changing public policy, or other factors, and to produce proposals for Ofcom to approve. This could be a vital way to ensure that the Codes stay relevant and responsive to public policy concerns.

Are there any changes which could improve on current regulation?

The current system has offered little encouragement to people to complain or have their voice heard. Although there is a complaints system, it is not widely used, perhaps because of the perception that few complaints are upheld. The ITC and ASA have not promoted themselves as upholders of individual citizens and advocates for their interests to the industry.

The NFPI would welcome a through-going overhaul of the complaints process:

- Consumers should be made more fully aware of the role of Ofcom, the ASA, the Codes of Practice and current restrictions and regulations
- Information should be made available through the web, leaflets, adverts

- A simplified and easy-to-use complaints procedure should be available by post, phone, text messaging and email
- Replies should be speedier
- The NFPI would also like to see the co-regulator acting proactively, commissioning research from consumers on changes to the Codes, on possible future policy changes and use that information to advocate for consumers. Ofcom should consider setting up a children's and young people's panel, or researching children's views on a regular basis.

The current system had no capacity to take an overview about the effects of advertising on children, in terms of quantity, the cumulative effect and different advertising media. Its purpose was focused on individual adverts, to ascertain whether any provisions in the codes had been broken.

Ofcom will have the capacity to commission or undertake research on overarching issues such as advertising across different media, including the internet and mobile phone technology. There is a growing need to monitor and assess the effects of high volume, multi-media marketing to consumers generally, but particularly to children and young people. The NFPI strongly urges Ofcom to take a pro-active and joined up approach to advertising across the board.

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