

Children's Food Bill campaign response to Ofcom Consultation
Document: Television Advertising of Food and Drink Products to
Children

I am pleased to submit a response to the above consultation on behalf of the Children's Food Bill coalition, which is co-ordinated by *Sustain: the alliance for better food and farming* (please see www.childrensfoodbill.org.uk). A draft of this response has been circulated for comment to all 164 national organisations that currently support the Children's Food Bill.

The Bill calls for measures to:

- protect children from the marketing of unhealthy food and drink products;
- improve school food standards to ensure that all school meals are healthy;
- prevent the sale of unhealthy food and drinks from school vending machines;
- teach food education and practical food skills to all children;
- ensure the Government promotes healthy foods, like fruit and vegetables, to children.

The Children's Food Bill coalition's approach:

This consultation takes place in the context of childhood obesity becoming the nation's number one public health concern. The childhood obesity statistics paint a bleak picture about Britain's future health:

- One in three children is now obese or overweight.¹
- Obesity in under-11s has risen by over 40% in ten years.²
- The Chief Medical Officer has compared the crisis in children's diets to a health 'time bomb' which must be defused.³
- The International Obesity Task Force estimates that each year in England 220,000 additional children become overweight or obese.⁴

In fact the childhood obesity situation is so serious that Sir John Krebs, former Chair of the Food Standards Agency (FSA), has warned that for the first time

¹ National Audit Office, Healthcare Commission, Audit Commission (2006); Tackling Childhood Obesity – First Steps.

² As above.

³ Chief Medical Officer, (2003), Health Check: On the state of public health – Annual Report 2002, Department of Health.

⁴ International Obesity Task Force estimate is based on Health Survey for England 2002 figures, using UK definitions of overweight & obesity.

in more than a century life expectancy may fall, with the real prospect that parents may outlive their children.⁵

No one would seek to claim that junk food advertising is the sole cause of childhood obesity. However, unless we take urgent action against childhood obesity across all of the relevant fronts (diet, exercise, health information and so on) we will not reverse the trend in the growth of childhood obesity.

The Hastings' Review⁶ and its subsequent peer review⁷ showed that there is a "causal link" between junk food advertising and childhood obesity. Hastings also concluded that there was not enough evidence to suggest the size of this effect. According to Hastings it is impossible to say that the effect of food advertising on obesity is "modest", as Ofcom states in its document. In these circumstances we believe the precautionary principle should apply and Ofcom should take greater steps to protect children's health than it is currently proposing. Professor Sonia Livingstone states that although the direct effect of advertising is modest, advertising had an unquantifiable indirect effect as well. She also reminded us that because an effect cannot be measured does not mean that it is small.

We also note research by Professor Livingstone which states that, although children's interaction with the media changes as they grow older, they remain equally vulnerable to advertising throughout their childhood. We therefore cannot see what the evidence is for Ofcom and the British Code of Advertising Practice (BCAP)'s concentration on younger children. We believe that content and scheduling restrictions should be based on the commonly agreed and legally specified definition of children as aged up to 16 years. It is especially vital that teenagers are covered by any potential restrictions as 21.5% of 12 to 16 year olds are obese⁸.

Finally, we have grave concerns about the consultation process used by Ofcom to reach their conclusions. We note the results of the Freedom of Information request submitted by Sustain that revealed that Ofcom met with industry groups on 117 occasions, compared to 18 meetings with health and consumer groups. We believe that it is evident in the consultation document that Ofcom have attached greater weight to the arguments made by the broadcast and food industry, compared to those made by other groups, including health and consumer groups, the Food Standards Agency and the Office of the Children's Commissioner.

We note that Ofcom have said that "*we are a broadcast regulator, if we were a health regulator we might have recommended something different*"⁹. This remark seems to confirm that Ofcom have put the interests of broadcasters

⁵ 'Official: fat epidemic will cut life expectancy', The Observer, 9 November 2003.

⁶ 'Does Food Promotion Influence Children? A Systematic Review of the Evidence,' by Professor Gerard Hastings and his team at the University of Strathclyde Centre for Social Marketing.
<http://www.food.gov.uk/news/pressreleases/2003/sep/foodtochildren>

⁷ Details from FSA website: <http://www.food.gov.uk/multimedia/webpage/academicreview>

⁸ Health survey for England 2003. Department of Health.

⁹ Comments made at the Westminster Diet and Health Forum, 1 June 2006.

before the health of our children. This issue is of critical national importance, given the enormous potential health, economic and social consequences of the current childhood obesity epidemic. Ofcom's close relationship with the broadcasters has meant that this consultation failed to address adequately the scale of the health problems we face.

Ofcom's questions:

Question 1: Do you agree that the regulatory objectives set out in paragraph 5.2 above are appropriate?

The Choosing Health White Paper¹⁰ said that the Government: *"would look to Ofcom to consult on proposals to tighten the rules on broadcast advertising, sponsorship and promotion of food and drink and secure their effective implementation by broadcasters in order to ensure that children are properly protected from encouragement to eat too many high fat, salt or sugar foods – both during children's programming and at other times when large numbers of children are watching. It should also include options for broadcasters and advertisers to participate in healthy living promotions."*

We agree with the Government that the overriding regulatory objective should be to reduce the instances of children watching adverts for high fat, sugar and salt (HFSS) food both during children's programmes and, crucially, at other times when large numbers of children are watching.

In line with this, we would be satisfied with the list of regulatory objectives set out in paragraph 5.2 if it were made clear that Ofcom had attached a descending amount of weight on each one e.g. objective one (children's health concerns) is prioritised over objective four (revenue of broadcasters).

However, we believe that Ofcom's regulatory objectives should have included the requirement to encourage the promotion of non-HFSS food. This is in-line with Government policy, set out in the *Choosing Health* white paper. Ofcom acknowledge the importance of changing children's diets. To do this we not only need less encouragement to consume HFSS food, but also positive suggestions about the non-HFSS alternatives. The Government has already acknowledged that efforts to change children's diets require leadership, and these must be positively reinforced through TV advertising.

Finally, as we will discuss in our answer to Question 5, we question how Ofcom define the word 'disproportionate' in point three. It would have aided the transparency of this consultation if Ofcom had set out a clear definition of 'proportionality', and therefore how it is measured. The lack of this definition makes it very difficult for stakeholders to a) understand Ofcom's thinking behind the initial exclusion of restrictions before 9pm, and b) put together alternative proposals that Ofcom would find 'proportionate'.

¹⁰ Choosing Health White Paper, Page 71, Para: 2.14. HMSO.

Question 2: Do you consider that it is desirable to distinguish between foods that are high in fat, salt or sugar and those that are healthier in order to achieve the regulatory objectives, or could an undifferentiated approach provide a reasonable alternative?

Yes. The Children's Food Bill (CFB) working party considers it essential to distinguish between foods in this manner. We also note that Ofcom is asked to differentiate between HFSS and healthy food in the *Choosing Health* White Paper.

We reject an undifferentiated approach because it would damage the advertising of non-HFSS and would remove the impetus behind the food industry's efforts to reformulate products. There is a consensus across all stakeholders that re-formulation of products is important in helping to combat the appalling quality of children's diets. Re-formulation of products would be one positive response by the industry to the demands of the childhood obesity epidemic. A differentiated approach will encourage this welcome trend. A non-differentiated approach will stop it in its tracks.

Children's diets are currently very poor. Research suggests that, at present, 94% of 7-10 year olds consume more saturated fat than is recommended¹¹, and 12% of boys and 17% of girls consume more than 40% of their energy from fats¹². Among 4-6 year olds, salt intakes are 30-50% higher than recommended¹³, and 86% of children exceed maximum recommended intakes for non-milk extrinsic sugars¹⁴. In light of these figures, it is therefore imperative to lower the fat, salt and sugar intakes of Britain's children.

As we state in our answer to Question One, we believe in order to make a substantial improvement to children's diets we need to enthuse children about eating more healthy food. This will be extremely difficult if a non-differentiated approach to controlling food advertising is adopted. Blanket restrictions would leave the general pattern of HFSS verses non-HFSS food consumption unchanged. This would be disastrous for the nation's health and contrary to Government policy. It would not also run contrary to Ofcom's regulatory objective of "reducing attempts to persuade children to demand and consume HFSS products".

In fact, we believe that introducing undifferentiated controls on both the volume and content of food advertising would actually be a step backwards and may even increase the prevalence and rate of growth of childhood obesity.

¹¹ Ministries of Agriculture Fisheries and Food and Department of Health (2000) The national diet and nutrition survey- young people aged 4 to 18 years. ONS.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

Question 3: If so, do you consider the FSA's nutrient profiling scheme to be a practical and reasonable basis for doing so? If not, what alternative would you propose?

Yes, we believe the FSA's nutrient profiling model is the best method available to distinguish between HFSS foods and healthier alternatives. We also note that Caroline Flint has endorsed the FSA's model: *"The Department [of Health] believes that the nutrient profiling model, developed by the Food Standards Agency for use by Ofcom, provides a scientific and objective base for underpinning regulatory intervention in relation to television advertising to children."*¹⁵

The FSA's nutrient profiling model was arrived at after a lengthy consultation process with all stakeholders, and following the most rigorous scientific Analysis. Ofcom acknowledges that the FSA is the 'competent body' to make judgements on the relative merits of the different approaches taken to defining HFSS food, and therefore we are very surprised that Ofcom has only accepted the judgement of the FSA in one of its three policy packages and has endorsed BCAP's undifferentiated content rules.

Ofcom has admitted that it does not have the scientific expertise to comment on nutrient profiling, and we believe that in these circumstance it should have accepted the recommendation of the FSA and included this model in all its proposals.

Most stakeholders accept (with varying levels of enthusiasm) that differentiation is necessary. The main point of controversy over the FSA model is that food is profiled using 100 grams as opposed to portion sizes. Although we recognise that using 100 grams is not perfect, we believe it is a much better way to proceed than allowing the food industry to define what portion sizes are. Evidence shows that portion sizes put forward by the industry are unrealistic and often well below the actual amount consumed. Portion sizes used by Tesco, for example, to inform their own food labelling scheme, include:

1. Tesco value milk and plain chocolate, 100g. Portion size given: 1 cube (24 cubes per 100g bar).
2. Tesco cream crackers, 200g. Portion size given: 1 cracker.
3. Tesco milk chocolate digestive biscuits, 500g: Portion size given: 1 biscuit.
4. Tesco Finest Parma ham (8 slices in pack). Portion size given: 1 slice.¹⁶

It has been reported in the media that industry is seeking to arrive at its own nutrient profiling system as part of their submission to this consultation. To be clear, we do not accept any nutrient profiling system that is based on:

- Industry defined portion sizes.

¹⁵ Answer to Parliamentary Question, June 2006.

¹⁶ Based on purchases made in a Tesco store in London in June 2006.

- Distinguishing only between foods within categories (e.g. where the healthiest section of each food category, however unhealthy the category, is highlighted as healthy).

Given that a consensus on an alternative nutrient profiling model is highly unlikely to be reached we trust that Ofcom will continue to acknowledge the FSA's authority in this area and support the FSA's model.

Question 4: Do you agree that voluntary self-regulation would not be likely to meet Ofcom's regulatory objectives or the public policy objectives?

Yes, we believe that voluntary measures do not work.

In July 2005, Sustain, on behalf of the Children's Food Bill published a document entitled: *The Children's Food Bill: Why We Need a New Law, not More Voluntary Approaches*. This document discusses the inherent weaknesses of voluntary approaches and self regulation, and draws on examples from tobacco advertising, alcohol promotion, the marketing of breastmilk substitutes, the use of pesticides and antibiotics in farming, and measures to control the powers of supermarkets.

The reasons outlined in the report for the failure of voluntary approaches were:

- Voluntary codes are weak and tend to contain vague phrases rather than firm targets.
- There are commercial incentives not to apply meaningful sanctions for non-compliance.
- Independent monitoring and enforcement is rare.

We believe that all of these failings of voluntary approaches are demonstrated by the BCAP code on advertising content contained in the Ofcom consultation document.

Question 5: Do you agree that the exclusion of all HFSS advertising before 9.00pm would be disproportionate?

No. The CFB working party believes that the removal of all HFSS advertising before the 9pm watershed is crucial. A 9pm watershed would remove 82% of the recorded HFSS advertising effects on all children aged 4-15 years. Ofcom's own report, and FSA research outlines the benefits of this: primarily the nation benefiting by up to £990 million a year, equating to some 2000 lives saved a year.

These financial considerations cannot, of course, reflect the significant human costs of obesity, which include reducing life chances, bullying at school, discrimination at work and so on. Although these costs are impossible to quantify they should be taken into account by Ofcom in their definition of proportionality.

'Proportionality'

The concept of proportionality in this case accepts there is a trade-off between the cost to industry of new restrictions and the potential for benefit to children's health. To be clear: we do not accept that such a trade-off exists. We believe that children's health is of overwhelming importance compared to costs to industry. It is distasteful to try to balance the costs of advertising restrictions against their health benefits. To do this puts a (very low in this instance) price on a child's health and tries to quantify in monetary terms such things as the effect on a child's self esteem and job prospects of being obese. Such a callous trade-off is by definition doomed to failure.

Even if we were to accept the terms of such a trade-off, we are astounded that Ofcom deem pre-9pm restrictions "*impose a disproportionate impact upon broadcasters*".

We believe Ofcom have been remiss in not including within the consultation documentation how they define 'proportionality'. This omission significantly weakens the consultation, given the weight that Ofcom place on the so-called 'disproportionate' nature of pre-watershed restrictions.

We also believe that Ofcom have been negligent in not conducting an independent survey of the costs of a pre-watershed ban. The costs set out in the Ofcom document are based on the percentages of HFSS advertising that can be replaced by other advertising. However, the figures used to estimate this have been provided by industry, particularly the Institute of Practitioners of Advertising. We have little faith in figures provided by such an obvious vested interest. We find it barely credible to assume that broadcasters will only be able to replace 45% of HFSS adverts during the key early evening slot.

We note from paragraph 6.15 of the impact assessment that Ofcom acknowledges: "*It is less clear that the reduction in prices in the restricted times will mean an overall loss of revenue with no substitution from other advertisers. The broadcasters and advertising agencies have not explained why non-HFSS advertisers who are already advertising to children within the proposed restricted period would not increase their expenditure in response to a reduction in the price of advertising in children's airtime. Equally, if the reduced demand for airtime results in a price reduction, new advertisers may be attracted into the market.*" This suggests that, to some extent, Ofcom shares our scepticism about the industry's figures. However this scepticism has not been taken into account elsewhere in the document.

This scepticism has also not been reflected in Ofcom's comments in the media, where these figures have been used to defend the consultation from public criticism by stakeholders. Ofcom's failure to provide reliable and independent research into such issues as the substitution rate for HFSS food television advertising calls into question Ofcom's efficacy as a regulator.

However, even if one accepts industry's figures about the costs of a pre-watershed ban, Ofcom's omission of a definition of proportionality leaves all stakeholders to arrive at their own definition of proportionality. A "common sense" definition of proportionality would be that the benefit is greater than the cost. The table below shows that, according to the Value of Life assessment used to calculate the medical cost, lost output and human cost of obesity, the benefits of pre-9pm watershed restrictions significantly outweigh the costs:

	Cost (£m pa)	Benefit (£m pa)	Net benefit (£m pa)
Low	103	245	142
Medium	141	495	354
High	166	990	824

Depending on the assumptions, the benefits to the nation of pre-watershed restrictions outweigh the costs to broadcasters by anywhere between £142 million pounds a year and £824 million pounds a year.

It is worth remembering that the FSA stresses that the values they assume are conservative underestimates because they exclude not only the beneficial effects of substitution with healthier foods (except some substitution of fruit for HFSS snacks) but also the effects of premature diet-related death and illness in children and younger adults. Such calculations, of course, cannot include an estimation of the unquantifiable indirect effects of obesity.

The consultation document seems to systematically overestimate cost to broadcasters at the same time as systematically underestimating the health benefits of new restrictions.

Therefore, even if one accepts that there can be a trade-off between children's health and company profits (which we do not) and even if one accepts the industry's figures on the cost of advertising restrictions (which we do not) pre-watershed restrictions still save a great deal more money than they cost. We therefore believe that pre-9pm restrictions are 'proportionate'.

Advertising to adults

Ofcom's second objection is listed in paragraph 5.20 of the consultation document: *"...rather than being a targeted measure on younger children, its effect would be to restrict the viewing of audiences other than younger children. It would prevent adults from viewing advertisements for most HFSS food and drink products aimed at them, and could well make television an unattractive medium for manufacturers."*

It is, of course, true that children do not just watch children's television. Ofcom's own analysis shows that 80% of time spent watching television by 10-15 year-olds is outside children's airtime. Among younger children this figure is 57.3%. In fact, the commercial television programme most watched by children is Coronation Street. This means there is an even stronger case

for HFSS food advertising restrictions during early evening family viewing than during traditional children's TV slots.

We do not dispute the right of companies to advertise to adults. However, we cannot agree with Ofcom's view which seems to be that the right to advertise to adults is more important than the need to protect children. Our view is that it is vital to protect children from HFSS food advertising, and if that means that some adverts that would be primarily viewed by adults can no longer be shown, so be it.

We believe that the application of the precautionary principle (as recommended to Ofcom by the FSA) should mean that, where there are competing imperatives, children's health should be placed first. Put another way, Ofcom needs to decide whether it places greater weight on the rights of advertisers or on children's health. At the moment, it is clear Ofcom see their duty to advertisers outweighing their duty to children.

Finally, we note that Ofcom has made no calculation of the health benefits to adults of the reduction in instances of them watching junk food adverts. Although health benefits to adults are not central to our case, they could be considerable, and by calculating the costs but not the benefits from this, Ofcom have incorporated additional bias into the consultation document.

Parental and professional support

Ofcom's final objection to pre-9pm restrictions is that they are not supported by the public.

The final section of paragraph 5.20 states: "*In qualitative research described in section 3 parents have indicated that they do not favour a ban on HFSS advertising extending to 9pm.*"

We believe Ofcom's interpretation of their polling figures on this option are deeply misleading. Your own figures show that 48 percent of those surveyed supported HFSS advert restrictions before 9pm, while only 24 percent opposed them, with the balance undecided. This would indicate to us strong support for this option, rather than opposition as Ofcom spun it in the consultation document.

In addition, a recent poll by TNS on behalf of the British Heart Foundation does not support this claim: 68% of respondents would be in favour of a 9pm watershed restriction, with only 7% of respondents stating that they would object.¹⁷ Crucially, parents' support for a 9pm watershed was uniform across all regions of the country and parents with children of all age groups. A survey by Which? in February and March 2006 found that 79% of parents think that TV ads for unhealthy foods should not be shown during the times that children are most likely to be watching TV.

¹⁷ British Heart Foundation 2006: sample of 838 adults aged between 16-64. Poll conducted by TNS research between 9 and 15 May 2006.

This poll constitutes the new research that Ofcom requested in order to re-examine views on the option of the pre-9pm watershed restrictions and we trust that, in the light of this, Ofcom will consult on this option as equal with other policy packages.

Finally, restricting junk food adverts before 9pm is supported by a large number of well respected professional and government bodies. In the last few weeks pre-watershed restrictions were endorsed by the British Medical Association, The Food Standards Agency, the Children's Commissioners for England, Scotland Wales and Northern Ireland and many leading charities and NGOS. Given this unprecedented level of support from both public and professional bodies, we feel Ofcom have a mandate to adopt pre-watershed restriction if they wish.

Conclusions

We believe that none of the three arguments used by Ofcom to justify their opposition to pre-watershed restrictions hold water:

- The consultation documents simply do not include enough independent evidence to conclude that the costs are disproportionate.
- Ofcom has not followed the precautionary approach recommended by The Food Standards Agency in resolving differences between the rights of advertisers and the need to protect children's health.
- The latest research confirms very significant parental support for restricting HFSS adverts before the 9pm watershed.

Pre-9pm restrictions clearly meet the following regulatory objectives, as they:

- Reduce significantly the exposure of younger children to HFSS advertising, thereby reducing attempts to persuade children to demand and consume HFSS products.
- Enhance protection for both older and younger children.
- Ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe whether there have been changes to the nature and balance of food promotion by early 2007.

Of the other relevant regulatory objectives, pre-9pm restrictions will also:

- Avoid a disproportionate impact on the revenue of broadcasters.

Although we do not agree with the validity of the trade-off between company profits and children's health, given the limitation of Ofcom's impact assessment there simply is not the independent evidence available to show whether this regulatory objective will be met or not.

- Avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages;

This option imposes no limitation at all on advertising during adult airtime (post 9pm watershed). It does impose regulations during children's and family

viewing hours up to 9pm. However (as discussed above) the precautionary principle, recommended by the FSA, provides a justification for this.

We feel that pre-9pm restrictions are consistent with Ofcom's regulatory approach and are clearly in the national interest. Given Ofcom has now acknowledged that this is an 'option'¹⁸ we hope the regulator will recognise the overwhelming case for adopting this proposal. We also note that Ofcom's interventions aim to "evidence based"¹⁹, which runs contrary to 9pm being excluded from the original consultation despite the clear lack of independent evidence in Ofcom's document.

As we mentioned earlier, Ofcom has at least been honest in stating that this option was felt to be disproportionate because it is a regulator primarily concerned with the economic health of the broadcast industry, rather than the physical and mental health of children. However, Government's view of Ofcom's responsibilities in this area is clear: children's health, rather than the narrow interest of the broadcast industry, should be paramount.

Question 6: Do you agree that all food and drink advertising and sponsorship should be excluded from programmes aimed at pre-school children?

Yes, although we are primarily concerned with advertising of HFSS products. However, we note that industry has already volunteered to undertake this measure. There is currently very little advertising aimed at this group because they have no spending power independent of their parents. This, means that advertising to this group would depend on using 'pester power' to succeed, which is supposedly prohibited by the current advertising code.

Question 7: Do you agree that revised content standards should apply to the advertising or sponsorship of all food and drink advertisements?

No. We believe that content restrictions should only apply to HFSS food. The CFB supporters were very interested to note that BCAP rejected the advice of its own consumer panel on differentiation.

In the ASA annual report Chair, Elizabeth Filkin reports "*BCAP has accepted most of our advice other than our preference that the content proposal should differentiate between high fat, sugar and salt (HFSS) foods and non-HFSS foods.*"²⁰

As we outlined in our response to Question Two, in order to change children's diets it is necessary to promote non-HFSS food using all of the marketing methods available. These new proposals would make it impossible to, for example, promote fruit and vegetables using celebrities or licensed

¹⁸ Pre 9-pm restrictions are described as an 'option' in paragraphs 2.3, 2.5 and 2.31 of the updated consultation document, published 8 June 2006.

¹⁹ Paragraph 2.21 of Ofcom's original consultation document.

²⁰ ASA Annual report 2005. Page 35.

characters. This is perverse and clearly contrary to Government policy and accepted good practice.

We are very disappointed that Ofcom see BCAP as a co-regulator. BCAP is an industry run group whose senior members - Andrew Brown and Malcolm Earnshaw - are, respectively, chairs of the Advertising Association and the Incorporated Society of British Advertisers – the two leading industry trade associations.

As we outlined in our response to Question One, we believe the BCAP’s proposed content rules exhibit all of the usual failings of voluntary codes.

Question 8: Do you consider that the proposed age bands used in those rules aimed at preventing targeting of specific groups of children are appropriate?

No. We believe that all children, as defined by law, should be treated equally in these restrictions. Professor Livingstone’s research²¹ clearly shows that although children’s appreciation of advertising changes with age, their ability to resist it does not. Therefore we believe that, in-line with the UN convention on the rights of the child, all children should be treated equally in this consultation.

Question 9: Do you consider the proposed content standards including their proposed wording to be appropriate, and if not, what changes would you propose, and why?

We do not consider the BCAP content standards to be appropriate. These proposed standards tend to be vaguely worded, lack details and contain no specific targets to improve advertising. Our commentary on the rules is below:

BCAP proposal	Our comments
Food and drink advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children	<p>This is vague. We believe that it would be very difficult to apply this content restriction, as it is difficult to quantify what exactly constitutes encouragement.</p> <p>This restriction does not go far enough. We would like to this restriction to be amended to include advertising that portrays HFSS food to be tastier or “better” than non-HFSS food.</p> <p>For example, a recent advert for Jammy Dodgers involves the product coming to life and kicking a bag of sprouts off the table.</p>

²¹ Sonia Livingstone, A commentary on the research evidence regarding the effects of food promotion on children (2004).

	<p>We believe that this advert may infer to the child that sprouts are inferior to the product being advertised, thereby damaging the Government's five a day campaign.</p>
<p>Advertisements for food and drink must not advise or ask children to buy, or ask their parents to buy, the products. There must be no appearance of encouraging children to pester others to buy the products on their behalf;</p>	<p>This does not go far enough to decrease pester power. The wording itself, despite industry claims, does not ban all 'pester power' advertising; it only bans advertising that gets children to ask their parents direct questions and adverts that appear to encourage 'pester power', leaving a rather large loophole for adverts that try to encourage pester power in more subtle ways.</p> <p>The wording "appearance of encouraging children to pester others" is so vague that this appears to be a very difficult test to fail.</p>
<p>Promotional offers (including collectables and giveaways) in food and drink advertisements must not be targeted at children under 10.</p>	<p>We welcome the inclusion of content standards relating to promotional offers. However, these new measures do not go far enough.</p> <p>We believe that it is very difficult to quantify exactly what constitutes an advertisement directed at this age group. For example: the advertisement currently airing involving Pizza Hut and the footballer Michael Owen appeals to football fans across all age groups, including the under 10s.</p>
<p>Food and drink advertisements must not encourage children to eat or drink the product only to obtain a promotional offer;</p>	<p>It is not clear if this proposal should apply to children under 16 or those under 10? Interpretation of "only" is also likely to be problematic.</p>

<p>Celebrities must not be used in food and drink advertisements whose content is targeted directly at children under 10. This would prevent advertisers from using licensed characters (e.g., film or cartoon characters) that might make it difficult for younger children to distinguish between programmes and advertising.</p>	<p>The CFB working party supports restrictions on advertisers using cartoons, licensed characters and celebrities only for the promotion of HFSS food. Given the importance of using modern marketing techniques to persuade children to eat a healthier diet we believe it is counter productive to ban the use of licensed characters and celebrities to promote, for example, fruit and vegetables.</p>
<p>Advertisers would remain free to use brand characters (that is those solely associated with a particular brand) on the grounds that they do not carry the same authority as licensed characters;</p>	<p>The CFB supporters believe that advertisers should not be allowed to use brand characters to advertise their products. This regulation would allow, for example, McDonald's to continue to use 'Ronald McDonald' in their advertisements. Given research shows that young children are unable to distinguish between adverts and programmes, it seems logical to assume that they also cannot tell the difference between 'brand' characters and 'licensed' characters. This regulation creates a substantial loop-hole that will undermine the effectiveness of the content restrictions.</p>
<p>Nutrition claims must be supported by sound scientific evidence, and must not give a misleading impression of the health benefits of the product as a whole;</p>	<p>Whilst the CFB supports the need for sound scientific evidence, particularly the nutrient profiling system developed by the Food Standards Agency, we believe that no nutritional claims on HFSS food should be made in adverts aimed at children under 16.</p>
<p>No nutritional or health claims may be targeted at pre-school children (under 5 years);</p>	
<p>Advertisements must not condone or encourage excessive consumption of any food or drink.</p>	<p>We support the sentiment behind this regulation, but (again) feel it is worded in a way that makes it very difficult to enforce. This regulation should include a definition of what is meant by 'excessive consumption'.</p>

Question 10: Do you consider a transitional period would be appropriate for children's channels in the context of the scheduling restrictions, and if so, what measure of the 'amount' of advertising should be used?

No. Ofcom's hesitancy in compiling this consultation document has already resulted in an excessively long and drawn-out consultation process. A transitional period will result in these proposals coming into effect in 2009/10.

This would clearly fail to fulfil the following regulatory objective:

- Ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe whether there have been changes to the nature and balance of food promotion by early 2007.

The delay in the publication of this consultation has already given companies more than two years to prepare for tougher regulation of HFSS advertising aimed at children. Indeed, industry is very keen to promote the minor changes that have already taken place during this period. Given this trend, and the notice that stakeholders have already had about restrictions, we cannot see that a transitional period would be necessary.

Question 11: Do you consider there is a case for exempting low child audience satellite and cable channels from the provisions of Package 3?

No. We believe that the rules will best promote parental responsibility in controlling children's viewing of food adverts by ensuring rules are as clear and simple as possible. By giving certain satellite channels the opportunity to opt-out of new restrictions Ofcom would unnecessarily complicate the process of parents controlling whether their children see HFSS food adverts. A pre-9pm restriction for all channels is clear, simple and unambiguous.

Question 12: Do you agree that there should not be a phase-in period for children's channels under Package 3?

Yes, for the reasons outlined above in question 10.

Question 13: Which of the three policy packages would you prefer to be incorporated into the advertising code and for what reasons?

We reject all three policy packages and, as stated above, believe that HFSS food advertising should be restricted to after the 9pm watershed.

Package one:

We believe package one, although strongly preferable to the others because it differentiates between HFSS food and non-HFSS food, is simply not strong enough to have a positive impact on the childhood obesity crisis.

We note that Ofcom's re-issued impact assessment of package one, significantly reduces its predicted impact from ending 50 per cent of instances of children watching HFSS food adverts down to 39 percent . We note that Ofcom decided that a 50 percent reduction in instances of children watching HFSS ads was 'proportionate'. We believe the updated impact assessment shows that, even on Ofcom's terms, this option is now disproportionately weak.

However, we note that this option has not been 'stress-tested' and believe this omission leads to a significant over-estimation of the impact of package one. Were package one to be introduced, the obvious effect would be for HFSS food adverts to be moved from the affected times to early evening slots, when more children are watching television.²² By replacing three adverts during children's television hours with one advert during early evening family viewing, companies may still "hit" the same number of children at broadly similar cost.

We believe Ofcom has been deeply remiss not to model the effects of this potential re-alignment of the HFSS food advertising that we believe package one would bring about. If this re-alignment happens package one could well not reduce the instances of children watching HFSS food adverts at all. This is clearly not in line with Ofcom's regulatory objective of reducing children's exposure to HFSS food advertising.

Package two:

The effects of package two will be as weak as package one, but with the additional deeply damaging effect of restricting advertising for healthy food, as well as for HFSS food. This is not consistent with Government policy or Ofcom's regulatory objectives.

Package three:

Package three is the least desirable of all. It does not differentiate between HFSS and healthy food, which is not consistent with Government policy or Ofcom's regulatory objectives, and it allows advertising during the entire day.

Restricting the supply of slots for food advertising in this way will result in a substantial rise in the amount that broadcasters can charge for them. This will mean that the slots can only be bought by the largest food producers. This will provide an additional barrier to entry for new and/or innovative food producers trying to advertise non-HFSS food, to meet increasing consumer demand for healthier products.

Question 14: Alternatively, do you consider that a combination of different elements of the three packages would be suitable? If so, which elements would you favour within an alternative package?

²² As shown by Ofcom's own research on children's viewing patterns listed in the consultation document,

We have examined in detail ways in which the above packages could be combined and re-worked into a package that is able to meet the regulatory objective of significantly reducing instances of children watching HFSS food advertising.

The following table examines the effect of the measures outlined in package one by restricting HFSS food adverts in programmes that have a BARB index of 120, and then 100 for 4 to 15 year olds (instead of the 4 to 9 age bracket examined in Ofcom's consultation). The effect of this would still be to allow advertising during the key early evening family viewing slots when most children are watching.

All the most popular early evening programmes would be unaffected if the BARB index of 120 for 4 – 15 year olds was used instead of 4 to 9s. We note that in most cases regulations are based on BARB indexes of 100. Therefore we have looked at what restrictions would apply if a BARB index of 100 was used to regulate HFSS food advertising and found that Coronation Street, the commercial TV programme most watched by children, is still left unaffected. The table below sets this out.

Sample weekday in October 2005 showing programmes with highest absolute audience of 4-15s

Date	Time	Programme	Child viewing fig 000s (Which? figures)	Total viewing figures (BARB)	% of audience which are children	120 index (+/- 15.6%)	100 index (+/- 13%)
24.10.05	19.30	Coronation Street	1.29m	12.64m	10.2%	Minus	Minus
29.10.05	19.00	The X Factor	1.23m	8.60m	14.3%	Minus	Plus
29.10.05	20.15	ITV 50 Ant & Dec's Game show	1.12m	8.33m	13.4%	Minus	Plus
24.10.05	19.15	Emmerdale	0.924m	9.29m	9.9%	Minus	Minus

Based on BARB data purchased by Which? for 4-15s and total audience data available from the BARB website and BARB information on how the audience index is calculated for the UK.²³

From this we concluded that no combination of Ofcom's packages will meet the regulatory objective set out in the *Choosing health* white paper.

Question 15: Were you favour either Package 1 or 2, do you agree that it would be appropriate to allow children's channels a transitional period to phase in restrictions on HFSS / food advertising, on the lines proposed?

²³ The total UK population of 4-14 year olds is 7.62m which is 13% of the total population (58.79m) (based on Census 2001, ONS). Assuming that the 120 BARB rating for 4-15s (i.e. 20% over the population average) translates to a child audience percentage of 15.6% of the total audience.

No, for the reasons outlined above.

Question 16: Do you consider that the packages should include restrictions on brand advertising and sponsorship? If so, what criteria would be most appropriate to define a relevant brand? If not, do you see any issue with the prospect of food manufacturers substituting brand advertising and sponsorship for product promotion?

We consider it is vital that brands primarily associated with HFSS food are covered by any new restrictions.

An enormous loop-hole would be created in any regulations if companies such as McDonald's were allowed to advertise their brand, even if they were prevented from advertising the vast majority of their products. Such a loop-hole would further weaken Ofcom's already very weak proposals. It is quite clear that companies advertise brands in order to increase sales of products. Therefore advertising for brands primarily associated with HFSS food products will have the effect of boosting sales of these products.

We believe that restrictions should be applied to brands primarily associated with HFSS food. A simple definition for this would be brands where more than half of turnover is generated by HFSS food products.

Question 17: Ofcom invites comments on the implementation approach set out in paragraph 5.45 and 5.46.

Given Ofcom has already conceded that pre-watershed restrictions of HFSS food are 'an option' we trust that Ofcom will seriously consider the evidence offered from health and consumer groups, the FSA and the Children's Commissioner in support of effective restrictions. The evidence of the effectiveness of these proposals is clear, the evidence of their costs to broadcasters less so. Moreover, Ofcom must recognise that children's health should be the priority. the national obesity epidemic will not be stopped without taking difficult decisions, and we look to Ofcom to exercise leadership at this crucial point.

ends.

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