

Faculty of Dental Surgery response to DHSC consultation on ‘Total restriction of online advertising for products high in fat, sugar and salt (HFSS)’

1. Do you support the proposal to introduce a total online HFSS advertising restriction?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

The Faculty of Dental Surgery at the Royal College of Surgeons of England fully supports the proposal to introduce a total online HFSS advertising restriction as the most effective way to protect children from influential unhealthy food and drink adverts which contribute to an environment where children continue to have poor oral health. There is also a pressing need for effective regulation to restrict junk food advertising online as part of a comprehensive approach to reduce obesity. Adults are also influenced by HFSS online advertising and the high volume of HFSS adverts online is likely to be particularly unhelpful when adults are trying to improve their health. We consider that a total restriction would also bring significant benefits to adults' health. In the UK we have an established principle that food marketing causes harm and needs effective restriction. The conversation now should be how to we make the restrictions as effective as possible.

The current rules are weak and don't protect children from seeing junk food adverts:

The existing rules ban HFSS advertising in media of obvious appeal to children or where more than 25% of the audience is under 16 years old. In reality this is extremely hard to enforce in the online environment and creates significant loopholes.

- A YouTube channel or social media influencer popular with both adults and children can lead to large nominal numbers of young people being exposed without breaching the current threshold; for example, if a video is watched by 10 million people, a breach does not occur until more than 2.5 million children have seen it.
- It is not always possible for advertisers to see the demographics of a social influencer's audience. Plus children often access content and channels such as YouTube (which has an age restriction of 13) via parents' accounts or watch without being signed in. This makes the 'official' demographic of the viewing audience meaningless.

We agree with the points made in the consultation document about data transparency, age-gating accuracy and challenges of targeting adults using interest-based factors and other behavioural data as a proxy for age. We consider that the research by the Advertising Standards Authority (ASA) using child mimicking avatars provides strong evidence into the unreliability of existing targeting methods. Therefore we strongly agree with the Government's conclusion that a solution building on existing audience-based restrictions would not provide comprehensive protection to children.

A total ban would provide comprehensive protection to children across multiple online channels:

Online marketing is a complex eco-system comprising many different types of advertising formats. A 9pm watershed on junk food adverts online would be effective in limiting children's exposure to some types of digital advertising, but not all.

- Digital marketers use a range of advertising and engagement tactics to extend online brand presence. These techniques can be broadly categorised into Paid, Earned and Owned media. The introduction of a 9pm watershed on digital advertising would most likely only apply to Paid Media. This is because most paid media formats are targeted and can be turned on and off at specific times of day.
- In many cases the reach of Earned and Owned media is not subject to the same level of advertiser control as Paid media. This is due to the way Earned and Owned content is shared via social media, surfaced through platform content recommendations, and served in search engine results pages. This type of 'word of mouth' marketing is highly valued by brands as it is seen as more credible.
- In addition, the line between Paid and Earned media increasingly blurs as marketers create advertising that is designed to appear 'native' to the platform or publisher on which it is served. This type of advertising is designed to prompt higher levels of audience engagement and social sharing, which extends the potential reach of content beyond any targeting parameters that may have been set.

Advertising content is designed to be shared – putting it out of reach of a 9pm watershed:

- Once advertising content is shared by a user, there is no ability to control what time that content is viewed. Studies show that junk food brands frequently ask users to share or invite others to participate to extend its reach.
- Brands post organically on their own social media pages and channels as part of their marketing mix. Despite changes made by social platforms to limit the reach of organic posts, brands with large followings can get significant reach. For example on Facebook brands can still expect their posts to be seen by 5.5% of their followers (1). A major fried chicken retailer's UK Facebook page has over 55 million followers, so each post could be reaching over 2 million people.
- To maximise reach of organic content, social media managers will craft posts so they have the best possible chance of getting engagement and being shared more widely, e.g. via active customer relationship management, production of viral or 'on-trend' content, partnerships and co-creation, use of UGC, 'news-jacking' and use of cultural moments.
- A recent example is the UK KFC Dirty Louisiana Burger campaign, that achieved 75m impressions from a spend (not given) only expected to generate 18m impressions, reaching over 1 in 3 internet users in the UK alone (2). An award entry for the campaign discusses the 'very high levels of earned media obtained by the campaign' and shows how the agency engineered this via internet trend analysis (3).

References

1. Hootsuite blog post (2020). <https://blog.hootsuite.com/facebook-algorithm/>
2. WARC (2018). Effective Social Strategy Report. Lessons from the 2018 WARC Awards <https://www.warc.com/content/paywall/article/warcexclusive/effective-social-strategy-report-lessons-from-the-2018-warc-awards/123652>
3. https://www.marketingsociety.com/sites/default/files/thelibrary/KFC%20winner%20Finance%20Director%27s%20Prize_Redacted1.pdf

We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:

- 1. Marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to rival companies or other operators in the supply chain.**
- 2. Factual claims about products and services.**
- 3. Communications with the principal purpose of facilitating an online transaction**

2. Do you agree with this definition?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

We disagree with the inclusion of 'factual claims and online transactions', with brands likely to exploit these definitions, for example by adding a link to an online retailer.

Influencer marketing

Influencer marketing is now a well-established digital channel worldwide. Whilst reports vary on influencer marketing budgets within the UK, one 2018 study found 20 percent of UK PR and marketing professionals planned to spend between £10,000 and £100,000 on influencer marketing over the next 12 months. Nine percent planned to allocate a budget of over £100,000. According to YouGov/IAB, 50% of brands believe in influencer marketing's ability to drive success (2).

As the influencer industry is still relatively new, regulation is struggling to keep up: One in four complaints about online advertising submitted to the UK's Advertising Standards Authority (ASA) in 2019 took issue with sponsored influencer posts. This equated to 4,000 complaints (3). In addition YouGov reported 73% of brand executives describing the influencer marketing industry as "murky" (4).

We are concerned that influencer marketing could become a significant loophole in the policy. Food companies are working with social media influencers to promote HFSS products. While some of these are transparently labelled as #ad (in line with existing rules), others feature products that have been gifted to the influencer or have no indication of a relationship between brand and influencer. Our concern is that a loophole could emerge where brands continue to work with influencers, but the financial relationship becomes less transparent, or they 'gift' products in the expectation of exposure.

1. <https://www.statista.com/statistics/869362/influencer-marketing-planned-spend-in-the-united-kingdom-uk/>
2. https://www.iabuk.com/sites/default/files/user_attached_file/Influencer%20Marketing%20Marketers%20Survey_0.pdf
3. <https://www.thedrum.com/news/2020/06/03/influencer-posts-dominate-online-complaints-uk-ad-watchdog>
4. <https://yougov.co.uk/topics/resources/articles-reports/2020/05/11/influencer-marketing-spend-drops-trust-influencer->

Outdoor advertising

We would like to see the scope broadened to include digital outdoor advertising. Outdoor marketing is commonly used by food brands and according to Outsmart, is the most efficient medium for those brands in terms of return on investment having such a wide reach that 98% of people are exposed to some form of outdoor marketing daily (1). Current CAP rules provide extremely limited protection to children with a suggestion that HFSS advertising should not be placed within 100m of a primary school. This guideline is regularly breached (2).

A recent study examining outdoor HFSS advertising in Liverpool found that HFSS adverts were disproportionately placed in areas of social deprivation (3). Given the existing inequality in levels of child tooth decay and childhood obesity, significant displacement of HFSS advertising to outdoor advertising could contribute to widening this inequality. Extending the scope to include outdoor digital advertising would provide significant additional protection to children when they are out and about.

The online marketing environment is fast-paced and innovative with new formats and marketing techniques developing all the time. It will be challenging for the Government to effectively future-proof this policy by identifying now all types of marketing scope that will be in use in the future. Therefore it is vital that the

regulation has a regular two-yearly review mechanism where the scope can be adjusted to capture new marketing techniques that have evolved that may be exempt.

1. <https://www.outsmart.org.uk/>
2. https://www.sustainweb.org/news/nov18_asarulings/
3. Palmer G et al (2020) <https://arxiv.org/abs/2007.04611>

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

4. If answered yes, please can you give an overview of what these difficulties are? Please provide evidence to support your answer.

Please explain your answer and provide relevant evidence

5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertiser' should be defined as a natural or legal person, or organisation that advertises a product or service?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

It is important that the definition of 'advertiser' is broader than the food or drink brand owner. A significant portion of food and drink advertising online is by organisations that sell food on behalf of brand owners. This includes food delivery platforms such as Just Eat, Deliveroo and Uber Eats along with larger retailers. There are also a number of smaller retailers who sell branded HFSS food products as part of hampers or gifts. It's important that all these persons and organisations are included in the definition to a) create a level playing field and b) ensure that HFSS brand owners don't displace their advertising to third party organisations.

6. Do you agree that for the purpose of appropriate measures, the term "online service providers" should include all internet services that supply services or tools which allow, enable or facilitate the dissemination of advertising content?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

7. Our proposed exemption for factual claims about products and services would include content on an advertiser's social media. Do you agree with this approach?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

Advertisers' own social media channels are an important part of the marketing mix. Brands post organically on their own social media pages and channels as part of their marketing mix. Despite changes made by social platforms to limit the reach of organic posts, brands with large followings can get significant reach.

- For example on Facebook, brands can still expect their posts to be seen by 5.5% of their followers (1). A major fried chicken retailer's UK Facebook page has over 55 million followers, so each post could be reaching over 2 million people.
- To maximise reach of organic content, social media managers will craft posts so they have the best possible chance of getting engagement and being shared more widely, e.g. via active customer relationship management, production of viral or 'on-trend' content, partnerships and co-creation, use of UGC, 'news-jacking' and use of cultural moments.
- A recent example is the UK KFC Dirty Louisiana Burger campaign, that achieved 75m impressions from a spend (not given) only expected to generate 18m impressions, reaching over 1 in 3 internet users in the UK alone. An award entry for the campaign discusses the 'very high levels of earned media obtained by the campaign' and shows how the agency engineered this via internet trend analysis (2).

References

1. Hootsuite blog post (2020). <https://blog.hootsuite.com/facebook-algorithm/>
2. WARC (2018). Effective Social Strategy Report. Lessons from the 2018 WARC Awards https://www.warc.com/content/paywall/article/warcexclusive/effective_social_strategy_report_lessons_from_the_2018_warc_awards/123652

We propose that any advertisers which sell or promote an identifiable HFSS product or which operate a brand considered by the regulator to be synonymous with HFSS products should be required to set controls which ensure that their posts regarding HFSS products can only be found by users actively seeking them on the advertisers own social media page. This could be achieved, for example, by ensuring that the privacy settings on their social media channels are set so that their content appears on that page only. Do you think this would successfully limit the number of children who view this content?

8. Do you think this would successfully limit the number of children who view this content?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

Defining brands as synonymous with HFSS

As members of the Obesity Health Alliance, we share their concerns about leaving the regulator to define when a brand is considered synonymous with HFSS 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."(1) Given the sheer number of brands, it is completely unrealistic for whether restrictions should apply 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. In 2018 OHA submitted a complaint about a TV ident on a children's TV channel featuring a chocolate cereal 'coco pops granola' which was a variation of the coco-pops product. While the cereal product itself wasn't classed as HFSS, we considered the product name, branding and advertising content to reflect the main HFSS coco-pops product to the extent that it was having the effect of promoting an HFSS product. ASA initially upheld the complaint, but months later, rowed back, following lengthy correspondence from Kelloggs UK's legal team (2). It is our view that the industry-funded regulator ASA should not be using their judgement to make define brands as synonymous with HFSS.

What makes a brand synonymous with HFSS is a vital question. The government should convene an expert panel, excluding food industry representatives, to develop a clear definition, based on objective data such as product sales or sales weighted-averages with brands whose sales is weighted towards HFSS products in their portfolio defined as HFSS brands. This definition should be legally enshrined in the regulations to be applied by the regulator.

References

1. <https://www.asa.org.uk/asset/6B42B9F3-96EC-4A66-A9B50F0E21D845BF/>
2. <http://obesityhealthalliance.org.uk/2018/11/21/oha-statement-coco-pops-granola-advert-ruling-reversal-food-companies-fight-rulings-childrens-health-will-pay-price/>

9. In your sector or from your perspective, would a total restriction of online HFSS advertising confer a competitive advantage on any particular operator or segment of the online advertising environment?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

Providing the definitions used to define what is in scope of the restriction is comprehensive, then no operator or segment of the online advertising environment is likely to have a competitive advantage. However, as the online environment is a fast-moving, innovative space, it is important that a regular review process is built into the regulations so the scope can be monitored and emerging loopholes closed.

10. If answered yes, are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

11. We are proposing that Broadcast Video on Demand (BVoD) is subject to a watershed restriction as Project Dovetail will mean they have BARB equivalent data. Do you know of other providers of online audience measurement who are able to provide the same level of publicly available assurance with regard to audience measurement?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

We are concerned that this consultation does not afford the opportunity to review and comment on Government plans to restrict HFSS advertising on BvOD platforms. We share the Obesity Health Alliance's suggestions set out below.

If BVoD is subject to a 9pm watershed on HFSS advertising this should be applied to two ways:

- It should apply to programmes that were originally broadcast on live TV between 5.30am-9pm regardless of the time they are being watched on BvOD.
- It should apply to all content viewed on BvOD between the hours of 5.30-9pm even if it was previously shown post 9pm on live TV.
- Consideration needs to be given to how BvOD would be regulated. Due to advertising being dynamically served on this platform, it will be significantly more challenging to identify issues of non-compliance.

Enforcement and liability

12. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures requirements by those in scope of this provision?

We support an approach to enforcement that encompasses the principles below:

- Regular proactive monitoring to identify non-compliance: Given the vast nature of the online environment and the short life-span of digital marketing campaigns, it is vital that level of compliance with this policy is not based on reactive complaints alone. Ideally proactive monitoring would be carried out by an independent group with full details on breaches published.
- Fines for repeat non-compliance: The existing approach to 'enforcement' of the CAP rules by ASA is weak and does not act as a deterrent for repeat offenders. An example of this is Mondelez who ASA have repeatedly engaged with to 'informally resolve' likely breaches which has not resulted in changes to their advertising practices. To prevent significant non-compliance, financial penalties are needed as a meaningful deterrent.
- Full transparency: Full details on all complaints, investigations and resolutions should be publicly available.

13. Should the final proposals lead to the creation of new central government arm's length bodies, then the usual, separate government approval process would apply for such entities. This equally applies to proposals elsewhere in this document.

Should the statutory "backstop" regulator for HFSS marketing material be:

a) A new public body

b) An existing public body

Please explain your answer and provide relevant evidence

The need to set up a new body should not act as a barrier to bringing in the restrictions by the end of 2022 as per the Government's commitment.

If answered b, which body or bodies should it be?

In the short-term our preference is for Ofcom to be appointed as the 'backstop' regulator.

Please explain your answer and provide relevant evidence

Ofcom has existing experience as co-regulator of television advertising.

14. Do you agree that the ASA should be responsible for the day to day regulation of a total online HFSS advertising restriction?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

15. Do you agree with our proposal that advertisers are liable for compliance with a total online HFSS advertising restriction?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

16. Do you consider that online service providers should be prohibited from running advertising that breaches the restriction or should be subject to a requirement to apply appropriate measures?

Prohibited

Subject to appropriate measures

Neither

I don't know

Please explain your answer and provide relevant evidence

17. Do you consider that the sanctions available (voluntary cooperation and civil fines in instances of repeated or severe breaches) are sufficient to apply and enforce compliance with a total online HFSS advertising restriction?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

18. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirements?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

10. Would a total restriction on HFSS advertising online have impacts specifically for start-ups and/or SMEs?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

20. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?

21. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods could be used to apply the restriction to non-UK online marketing communications served to children in the UK?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

22. Do you see any particular difficulties with extending the scope to non-UK online marketing communications as well as UK communications?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

23. Do you see any difficulties with the proposed approach in terms of enforcement against non UK based online marketing communications as opposed to UK based ones?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

24. Do you think these restrictions could disproportionately affect UK companies?

Yes
No
I don't know

Please explain your answer and provide relevant evidence

Public Sector Equality Duty

25. Do you think that a total restriction on HFSS advertising online is likely to have an impact on people on the basis of their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

Yes
No
I don't know

Please explain your answer and provide relevant evidence - please state which protected characteristics/s your answer relates to

The United Nations Convention on the Rights of the Child came into force in the UK in 1992. The Convention is a recognition that children need special protections, and that adults and governments must work to ensure these. Restrictions on HFSS marketing will have a significant positive impact on child health.

26. Please read the following statements:

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**
- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**
- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

Do you think that any of the proposals in this consultation would help achieve any of these aims?

Yes

No

I don't know

27. Could the proposals be changed so that they are more effective? Please explain what changes would be needed

- Include outdoor
 - Change exemptions as detailed previously
-

Socio-economic impact

28. Do you think that the proposals in this consultation could impact on people from more deprived backgrounds?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

This policy will have a more positive effect on children from lower socio-economic backgrounds who are more likely to have poor oral health.

Recent NHS England hospital admissions data showed that although there had been a slight fall in admissions on the previous year, there were still more than double the number of children (23,529) undergoing hospital treatment for tooth decay, than for the second most prevalent cause, acute tonsillitis (10,359). The figures cover a period almost entirely before lockdown, from April 2019 to the end of March 2020. Since April 2012, over 350,000 young people have been admitted to hospital with tooth decay, of which 57% were aged between five and nine.

The PHE National Dental Epidemiology Programme for England: oral health survey of 5-year-olds 2019 states (p.34-35) that:

“When prevalence and severity of experience of dental decay in 5-year-olds in England in 2019 was plotted against deprivation it clearly showed a social gradient across both measures. The prevalence of experience of dental decay was 13.7% in 5-year-olds living in the least deprived areas compared with 34.3% in those living in the most deprived areas.”

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 6 (1).

Recent research from Cancer Research UK found teens from the most deprived communities were 40% more likely to remember junk food advertisements every day compared to teens from better-off families (2). This, combined with their already recognised greater risk of unhealthy weight outcomes suggest that they would potentially have the most to gain from regulation designed to reduce junk food advert exposure. An Australian modelling study (3) which sought to estimate the cost effectiveness of legislation to restrict HFSS TV advertising before 9.30pm, and examine the health benefits and healthcare costs savings by socio-economic status (SES) showed that legislation to restrict HFSS TV advertising is likely to be cost-effective, with greater health benefits and healthcare cost-savings for children (aged 5-15) in low SES groups.

References

1. NHS Digital. National Childhood Measurement Programme Data. 2016/17.
 2. Cancer Research UK (2018). A Prime Time for Action.
https://www.cancerresearchuk.org/sites/default/files/executive_summary_-_a_prime_time_for_action_.pdf
 3. Brown V, et al. The Potential Cost-Effectiveness and Equity Impacts of Restricting Television Advertising of Unhealthy Food and Beverages to Australian Children. *Nutrients* 2018, 10(5), 622;
<https://doi.org/10.3390/nu10050622>
-

Do you wish to answer questions about evidence note? *

Yes

No

In the evidence note we consider the costs to business and the health benefits arising from this policy proposal.

There will be an opportunity at the end to upload evidence you wish to submit to support your answers to the evidence note.

29. Do the calculations in the evidence note reflect a fair assessment of the transition costs that your organisation would face?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

30. Is the time allocated for businesses to understand the regulations a fair assessment?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

31. Are there any ongoing costs that your organisation would face that are not fairly reflected in the evidence note?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

32. Is the assessment on the number of online impressions a fair assessment?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

33. It is estimated that a significant proportion of HFSS advertising online will be displaced to other forms of media. Do you think the level of displacement is correct?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

34. It is assumed that the level of displacement to other forms of media would be the same under the options outlined in the evidence note. Would you agree with this approach?

Yes

No

I don't know

Please explain your answer and provide relevant evidence

35. Do you have any evidence on how competition may vary between the options in the evidence note? This can be any form of competition, e.g. competition between HFSS brands or competition between other forms of advertising.

36. Do you have any additional evidence or data that would inform:

- our understanding of children's exposure to online adverts?
- how different types of online advert (e.g. static display and video adverts) can have different effects on children's calorie consumption?
- the estimates for additional calorie consumption caused by HFSS product advertising online?
- the long-term impact of HFSS advertising exposure during childhood (e.g. on food behaviours and preferences later in life)?
- the health benefits of either option in the evidence note?
- how consumer spending habits will change as a result of these restrictions?

Upload further evidence to support your response.

Please state which part of the evidence note these documents are relevant to.

Contact

To discuss any of the points raised in this response in more detail please contact the Policy and Public Affairs team at the Royal College of Surgeons of England at publicaffairs@rcseng.ac.uk