

## **Consultation on the sexual portrayal of under-18s in advertising**

### **Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice's (BCAP) proposals for new rules**

Thank you for the opportunity to respond to the consultation on the sexual portrayal of under 18s in advertising. These proposals aim to bring in new rules which will prohibit the sexual portrayal or sexual representation of under 18s (or those who appear to be under 18) in advertising.

I am supportive of the proposals and feel that they will help towards protecting the welfare of under 18s and sit alongside national and international measures which prohibit certain types of sexual depiction. I would make the point, however, that these should be complemented by measures which support parents and carers to provide advice and guidance to young people on issues related to sex, relationships and sexualisation.

It is also important that young people receive high quality, age appropriate relationships, sexual health and parenthood education – along with education in media literacy – to build up their resilience and allow them to become critical consumers of sexualised content, thus helping to avoid harmful risk taking. Confidential advice and support should also be made available.

I appreciate that much of the above is beyond this consultation, but I feel that it is important to stress that measures should not sit in isolation from other preventative and protective measures.

### **Commissioner for Children and Young People in Scotland**

My role as Commissioner for Children and Young People is laid out in the Commissioner for Children and Young People (Scotland) Act 2003, the main function of which is to

promote and safeguard the rights of children and young people: Section 4 (1). In so doing, I must have regard to any relevant provisions of the United Nations Convention on the Rights of the Child: Section 5 (2), and to regard and encourage others to regard, the best interests of children and young people as a primary consideration. The UK signed the Convention in 1990, and it came into UK law in 1992.

For the purposes of the Convention a child means every human being below the age of 18, unless, under the law applicable to the child, majority is attained earlier. This is particularly relevant to this consultation, as are Convention articles 17 and 19.

Article 17 calls on states to recognise the important function performed by the mass media and ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. States must also encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18. Article 13 relates to the right to freedom of expression, such as the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice (though the exercise of this may be subject to certain restrictions). Article 18 recognises that parents or legal guardians have the primary responsibility for the upbringing and development of the child and that the best interests of the child will be their basic concern.

The Committee on the Rights of the Child has also emphasised that states parties must "*ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality*"<sup>1</sup>. Article 19 of the

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<sup>1</sup> Paragraph 16, General Comment number 3 (UN Committee on the Rights of the Child).  
[https://www.unicef.org/aids/files/UNHCHR\\_HIV\\_and\\_childrens\\_rights\\_2003.pdf](https://www.unicef.org/aids/files/UNHCHR_HIV_and_childrens_rights_2003.pdf)

Convention refers to states' obligations to provide children with educational measures to protect them, inter alia, from sexual abuse.

Relevant to this is the concept of the '*evolving capacity of the child*' introduced by the Convention. This means that as children acquire competencies, they exhibit a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives. It recognises that children in different cultures and diverse life experiences will acquire competencies at different ages, and that their acquisition of competencies will vary depending on circumstances.

Children's capacities may differ according to the nature of the rights to be exercised, so they will require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and also across different areas of decision-making.

The concept of evolving capacities is central to the important balance between recognising children as active agents in their own lives – entitled to be listened to, respected and granted increasing autonomy in the exercise of rights – and as being entitled to protection in accordance with their relative immaturity and youth. This provides the basis for an appropriate respect for children's agency without exposing them prematurely to the full responsibilities normally associated with adulthood<sup>2</sup>. It is a concept which resonates much with the matter in question, not least the importance of managing the 'normal' sexuality of children without prematurely sexualising them.

It is also worth highlighting Gill, Jackson and Vares' research of 2012 which found diversity among 'tweenage' girls about their media use and their uses/interpretations of media.<sup>3</sup> Whilst they had a sophisticated ability to criticise and deconstruct 'sexualised' images, this sat alongside very painful accounts of how bad such images made them feel

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<sup>2</sup> The evolving capacity of the child, Innocenti Insights: <https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>

<sup>3</sup> Jackson, S., Vares, Gill, R., 'The whole playboymansion image': Girls' fashioning and fashioned selves within postfeminist culture (2012), Sage Publications

and the kinds of pressures they feel subject to. The point here is that being able to critique an image does not necessarily mean that it has no impact.

Article 19 of the Convention calls on states to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation – including sexual abuse – while in the care of parent/s, legal guardian/s or any other person who has the care of the child. Exposure to sexual images and content would be covered by this, and there is considerable research around the effects that this can have on child development.

### ***Why this issue is important***

Over the past few years, there has been a great deal of concern around the premature sexualisation of under 18s, and numerous reviews and research projects have been undertaken e.g. the Byron, Buckingham and Papadopoulos reviews (2008, 2009 and 2010 respectively). In 2011, the *'Bailey Review on the Commercialisation and Sexualisation of Childhood, Letting Children Be Children'*<sup>4</sup> called on businesses and the media to play their part in ending the drift towards what they referred to as 'an increasingly sexualised wallpaper' surrounding children. A key part of this review was to listen to parents' concerns and to address the increasingly sexualised culture surrounding their children. The recommendations from this consultation were aimed at regulators, businesses and broadcasters. The NSPCC also explored this topic in 2011 and held a series of seminars on the risks associated with premature sexualisation.<sup>5</sup> Whilst the latter focused mainly on the role of parents, schools and other services in building young people's resistance to sexualised content rather than the role of regulation and of media providers in reducing the prevalence of this content, much of the debate is relevant to this consultation.

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<sup>4</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175418/Bailey\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175418/Bailey_Review.pdf)

<sup>5</sup> <https://www.nspcc.org.uk/globalassets/documents/information-service/seminars-premature-sexualisation-understanding-risks.pdf>

What emerged from the review and the NSPCC seminars was the importance of establishing a clear definition of sexualisation, as well as identifying what images are sexualising, and why young people engage in sexual and/or risk taking behaviour, including the impact of peer, commercial and media pressure and the effect of low self-esteem. The discussions also covered the differences in young people's exposure to, impression of and resilience to sexualised content. What was also highlighted was the importance of understanding both young people's ability to critique the media, the impact it has on their self-esteem and the fact that the two are not mutually exclusive.

### ***CAP and BCAP's decision to consult***

Clearly, sexualisation is a complex topic which is understood in different ways, but there is undoubtedly the potential for some adults to view under-18s in general as sexual beings and for some under-18s to feel pressured into viewing themselves as sexual beings. These examples are cited as being part of the reason why the CAP and the BCAP have decided to consult, along with concern around the protection of the individual models featured in advertising. The consultation also highlights a finding from the Bailey review which noted that a significant contributing factor was the pressure to take part in a sexualised life before they were ready to do so and found that advertising played an important role in this.

This consultation underlines the CAP and BCAP's general policy objective, which is to set standards to ensure that all advertisements are 'legal, decent, honest and truthful, and prepared with a due sense of social and professional responsibility'. Moreover, the codes should be based on the enduring principles that advertisements should be responsible, respect the principles of fair competition generally accepted in business and should not mislead, harm or offend. The consultation questions are set within this context.

I recognise that the Advertising Standards Authority (ASA), already has the interpretive power to deal with inappropriate and sexual images of 16 and 17-year-olds and that it can uphold complaints about such images. However, as the consultation rightly notes, without a specific age-related prohibition advertisers have no explicit signal to exclude such

imagery and no certainty as to what images are likely to be acceptable. An age-related prohibition is thus important.

### ***Proposed new rules***

The consultation highlights legal provisions which relate to the protection of under 18s, some of which relate to harm connected to commercialisation or sexual activity. There is similar legislation in Scotland, including the Sexual Offences (Scotland) Act 2009. Relationships Sexual Health and Parenthood (RSHP) Education in Schools guidance was also revised in Scotland and now better reflects the growing awareness of children's rights across Scottish public policy, public services and society as a whole. It also places this within a context of assessment and risk and child development.

The proposed rules will allow CAP and BCAP to provide an element of protection, while ensuring that advertisers are clearer about the types of imagery that they may include in their advertising (without running the risk of regulatory intervention).

The consultation also purports to be concerned with the protection of the individual models featured in advertising, and I agree that it goes some way towards doing this.

4.6. will include a new rule in the CAP code 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*

BCAP proposes to re-locate rule 5.5 to section 4 (harm and offence) and amend it as such

*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 prevent harm to, under 18s, provided any sexual portrayal or representation is not excessive.*

I agree with the introduction of CAP rule 4.6 and BCAP rule 4.4. As noted, I support early, age appropriate, sex and relationships education and media literacy. This should commence early in life and should also cover issues around privacy and peer violence. This exemption is important as it will ensure that any such advertising (e.g. that promotes sexual health in 16-17 year olds) will not be caught up in the change to the rules.

I agree that the new rules are a positive step towards necessary and proportionate strengthening of existing rules to protect the welfare of under-18s. However, I continue to be concerned that gender stereotyping of girls and women is still perpetuated in the media. Such stereotypes can have extremely negative effects on young girls - on how they perceive themselves and how they are perceived by others. There remains a serious need for children and young people to receive the information and safe support they require to develop critical capacities that will enable them to assess and examine gendered roles and behavioural expectations as depicted through the images promoted in advertising. The capacity of boys and girls to develop an understanding of the impacts of such gender stereotyping will aid in protecting themselves and others from personal harm and disrespect. This prepares them appropriately for a responsible and human rights respecting life in a free society where equality is promoted and discrimination against women and girls is no longer accepted.

A handwritten signature in black ink that reads "Tam Baillie". The signature is written in a cursive, slightly slanted style.

Tam Baillie  
Children and Young People's Commissioner Scotland