

Post-conception advice services

Regulatory Statement

20 January 2012



Executive Summary

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the bodies responsible for writing and revising the rules in the UK Advertising Codes. They are responsible for ensuring that the rules in place are effective and proportionate in protecting consumers, society and business.

CAP and BCAP have made changes to the UK Advertising Code rules relating to the advertising of post-conception advice services (PCAS). PCAS offer a range of services to women, including for example advice on health and well-being, provision of ultrasound services, as well as advice about women's choice to continue with their pregnancy or to have a termination. PCAS are made available to the public in a number of ways and through a variety of different organisations, including the NHS, voluntary sector and commercial organisations.

NHS-accredited PCAS must provide a full range of impartial advice to women about all available options including termination, for which treatment they may refer women in some cases. Other advice services also operate, which for various reasons, some ethical or religious, do not refer women for termination.

Background

In 2009, CAP and BCAP conducted a thorough review of, and consultation on, the advertising rules in their entirety to ensure that they were up to date and to ensure that, as far as possible, the rules governing broadcast and non-broadcast advertising were harmonised. The radio rule on family planning centres (which is how the BCAP Radio Code previously described PCAS) was considered by BCAP during its review. BCAP noted that there was no rule that explicitly addressed PCAS TV advertisements at that time, but that commercial services offering advice on unplanned pregnancy were likely prevented from advertising on television by the ban on advertisements for commercial services offering individual advice on personal problems. BCAP saw no reason to maintain difference in regulation between radio and television for PCAS: nor did it see a justification for discriminating between commercially and not-for-profit based service providers. Moreover, on the grounds of public health, it proposed a new rule to protect potentially vulnerable women from being misled by advertisements.

The proposal BCAP publicly consulted upon was whether:

- To allow commercial providers of PCAS to advertise on television, subject to the same rules that applied to non-commercial PCAS providers, who could already advertise on TV.
- Removing the radio rule permitting advertising only by those Family Planning Centres (FPCs) with local authority or NHS approval.
- Extending an existing radio rule to television, requiring medical and health advice services to provide suitable credentials before being able to advertise;

- Introducing a new rule to require services offering post-conception advice on pregnancy that do not directly refer women for a termination to make that fact clear in their advertisements.

This consultation prompted a significant response from the public, health professionals, charities and pressure groups. The responses indicated that most respondents appeared to have misunderstood what was being proposed. A significant number incorrectly believed that an outright ban on the advertising of all PCAS was being lifted and that for the first time services that offer advice on termination would be able to advertise on television. In light of this, BCAP decided to hold a second specific consultation, in which they clarified the proposals. This enabled BCAP to give the issue separate and careful consideration. The outcome of this consultation is detailed in this statement.

The outcome

BCAP carefully considered all the responses it received both for and against the proposals. It considered that the strong health grounds set out in its consultation warranted the introduction of a rule that requires advertisements offering advice to women on pregnancy to make clear when the advertised services do not refer women for a termination.

BCAP also considered that there was no justification to prevent commercial PCAS from advertising, subject to the rules in the Code requiring advertisements not to be harmful, offensive or misleading.

CAP recognised the strong public health grounds identified by BCAP for the introduction of a rule requiring PCAS to make clear if they do not refer women for a termination, and will introduce the same requirement in non-broadcast advertising: it does not see a reason for difference in regulation between broadcast and non-broadcast media given the evidence in question.

The new rules

The UK Code of Broadcast Advertising (rule 11.11.1):

Advertisements for services offering advice on unplanned pregnancy must make clear in the advertisement if the service does not refer women directly for a termination. Given that terminations are lawful only in some circumstances, and are subject to particularly stringent requirements in Northern Ireland, advertisers may wish to seek legal advice before advertising.

The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing Code (rule 12.24):

Marketing communications for services offering advice on unplanned pregnancy must make clear if the service does not refer women directly for a termination. Given that terminations are lawful only in some circumstances, and are subject to particularly stringent requirements in Northern Ireland, marketers may wish to seek legal advice.

The new rules take effect on **30 April 2012**.

Introduction

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the bodies responsible for writing and revising the rules in the UK Advertising Codes. They are responsible for ensuring that the rules in place are effective and proportionate in protecting consumers, society and business.

CAP is responsible for writing and revising the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). BCAP is responsible for writing and revising the UK Code of Broadcast Advertising (the BCAP Code). Ofcom has statutory responsibility, under the Communications Act 2003 (“The Act”), for maintaining standards in TV and radio advertisements. Ofcom entrusted BCAP and the broadcast arm of the Advertising Standards Authority (ASA) with the regulation of broadcast advertisements in 2004.

The ASA is the independent body responsible for administering the UK Advertising Codes.

This statement comprises the results of a consultation held by BCAP on the rules surrounding the advertising of post-conception advice services and its decision to amend the rules in the BCAP Code. It also details CAP’s decision to make changes to the CAP Code on the same topic.

Background to the BCAP Consultation

On 26 March 2009 BCAP launched a public consultation inviting responses to its proposed revisions to the old BCAP Codes¹. The consultation followed a root and branch review of the Advertising Codes and covered every aspect of the rules.

More than 29,000 responses to the consultation were received, many of which focused on the fact that BCAP had proposed to change the regulatory position on advertisements for post-conception advice services (“PCAS”). As part of the consultation BCAP proposed to change the current advertising rules for PCAS by removing rules which prevented commercial PCAS and those without local authority or NHS approval from advertising and introducing a new rule to require PCAS that do not directly refer women for a termination to make that fact clear in any advertisements. BCAP proposed that rule on public health grounds to ensure that women who do decide to seek a termination do not experience delays in obtaining one which would increase the risk of complications arising from the procedure.

Some respondents objected to what they understood to be the effect of BCAP’s proposals, namely that they would allow, for the first time on UK TV, advertisements for services that carry out terminations. In fact, there was nothing in the existing rules to prevent many PCAS, including those that offer terminations as an option, from advertising on TV or radio under the old Codes. While it was true that some services (namely suitably accredited commercial services and services without NHS or Local Authority approval) would be able to advertise on TV and radio for the first time under the proposal, BCAP’s primary intent

¹ In September 2010, four separate Broadcast Advertising Codes were combined to create a single UK Code for Broadcast Advertising.

was to ensure that advertisements for PCAS do not mislead about the service they offer.

However, in light of the responses received and the confusion around the likely effect of its proposal, BCAP decided to remove and postpone consideration of the issues relating to PCAS from the general analysis of responses to the overall consultation, and consulted separately on its proposed rule changes in June 2011.

BCAP's decision

In arriving at its decision BCAP weighed up, on the one hand, the legitimate wish of all categories of PCAS to advertise their legally available services and, on the other, the need to prevent harmful, offensive or misleading advertising. BCAP's aim is to introduce proportionate rules which allow responsible advertising to flourish while maintaining the necessary level of protection for audiences.

In evaluating responses, BCAP has not acted alone and has had input throughout the proposal, from development, through to the writing of the consultation document and subsequent evaluation of responses, from the Advertising Advisory Committee (AAC).² The AAC is a consumer panel established by BCAP to provide a consumer perspective to its code policy work, such as the drafting and interpretation of the BCAP Code. In addition, BCAP's evaluation and final rule have been submitted to the Ofcom Content Board³, who approved the proposal.

After careful consideration of the responses received, BCAP concluded that a wider category of PCAS should be permitted to advertise on TV and radio: it decided to remove the existing restriction for TV advertising preventing commercial services offering personal advice and the rule for radio advertising requiring PCAS to have local authority or NHS approval as a precondition to advertise. BCAP considered that the existing rule in the Code requiring providers of medical or health advice to demonstrate that they hold suitable credentials⁴, along with rules preventing advertising from causing harm or offence and enabling sensitive scheduling, were adequately robust to allow those services to advertise in a responsible manner, whilst upholding BCAP's principle that advertisements should not mislead, harm or offend. BCAP Code rule 11.9 states:

Advertisements are acceptable only if the advertiser can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of their skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

² <http://cap.org.uk/About-Us/BCAP-Broadcast.aspx>

³ <http://www.ofcom.org.uk/about/how-ofcom-is-run/content-board/>

⁴ 11.9 Services including Clinics, Establishments and the like Offering Advice on, or Treatment in, Medical, Personal or other Health Matters – Advertisements are acceptable only if the advertiser can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of their skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

In light of the strong case on public health grounds for increased transparency about the ability of some PCAS, some of which would now be permitted to advertise on TV or radio for the first time, to refer women for termination, BCAP also concluded that it was necessary and proportionate to introduce a rule requiring PCAS that cannot directly refer women for a termination to make that clear in TV or radio advertisements.

A more detailed explanation of BCAP's decision follows below.

Extending the ability to advertise

BCAP noted that very few respondents called for the existing restrictions, which effectively prevent commercial PCAS advertising on TV and only those PCAS with local authority or NHS approval from advertising on radio, to be retained or for the advertising of PCAS to be prohibited outright. However, many respondents considered that the removal of the existing restrictions would allow advertising for PCAS to proliferate, that it was a step too far and might normalise abortion.

BCAP considered that the existing advertising rules already allowed a wide variety of PCAS to advertise, the majority of which are not-for-profit or charitable organisations, and that the rule would only affect organisations that were faith based or commercial, allowing them to advertise. BCAP noted that such organisations offer legally available services and, if they comply with other rules in the BCAP Code, there is nothing to prevent them from advertising their services like other currently allowed PCAS, in a responsible manner which does not mislead, harm or offend audiences.

It was evident in the consultation responses that a number of respondents believed the advertising of PCAS could cause offence, particularly to those with particular moral or religious convictions. However, all advertising must adhere to strict rules and must not cause serious or widespread offence to audiences. Offence can often be mitigated through sensitive treatment of a subject or appropriate scheduling and BCAP considered that the existing rules in the BCAP Code would ensure that those new services that could advertise after the removal of the respective TV and radio prohibitions could do so in such a way that adheres to those rules which currently afford audiences protection from offensive advertising. Whether or not a particular TV or radio ad for a PCAS is likely to cause serious or widespread offence may be determined by the Advertising Standards Authority (ASA) in the event that it receives a complaint. In 2009, the ASA made a ruling on a TV advertisement for Marie Stopes.⁵ BCAP considers that the existing rules are fit for purpose for assessing the content of PCAS advertisements and would allow the ASA to take societal views and prevailing standards into account when making decisions.

BCAP also carefully considered some respondents' concern that the removal of the rules preventing some PCAS from advertising might increase the number of broadcast advertisements by services who take an ethical stance opposed to abortion using broadcast media to advertise without making their ideological stance clear. BCAP understood those concerns but, as above, considered that PCAS, both commercial and non-commercial, that

⁵ http://www.asa.org.uk/ASA-action/Adjudications/2010/8/Marie-Stopes-International/TF_ADJ_48869.aspx

can provide suitable credentials in line with rule 11.9⁶ and which meet the general requirements of the Code have a legitimate right to advertise their services on TV and radio.

In conclusion, BCAP decided to remove the television rule, which effectively prevents commercial PCAS offering personal advice from advertising, and the radio rule which effectively prevents only PCAS with local authority or NHS approval from advertising. BCAP understood that the removal of these restrictions would allow legally available PCAS to advertise, while maintaining robust protection for general audiences through existing rules which prevent broadcast advertising from causing harm or offence.

Introduction of a new rule for PCAS that cannot refer women for a termination

In line with BCAP's objective to ensure that advertising is legal, decent, honest and truthful and does not contain material which might cause harm, offence or mislead audiences, BCAP also considered the case for introducing new rule for PCAS requiring those that cannot directly refer women for a termination to make that fact clear in the advertisement.

BCAP noted that a number of respondents were concerned that the proposed rule would affect only those services that do not refer women for a termination, which they considered to be most likely those that take an ethical stance against abortion, but did not similarly require other PCAS to state that they could refer women or had a financial interest in the provision of termination services. On the other hand, some respondents who represented advice services that did not take an ethical stance against abortion, but did not have the facility to refer women for termination, considered that they might be unduly affected by the introduction of a new rule and women might presume they were opposed to termination when in fact they offered non-directive counselling.

In determining the merit of introducing an equivalent rule requiring disclosure by PCAS that can refer women for termination in the advertisement and requiring PCAS to indicate their ethical stance on abortion, BCAP carefully considered the vulnerability of women seeking advice on unplanned pregnancy and what information should be made available to them in an advertisement to afford adequate protection from harm. BCAP noted that The Royal College of Obstetricians and Gynaecologists advises that the earlier in pregnancy a termination is performed the lower the risk of complications to the woman and that a Report of the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 19677 recommended: "to ensure that no patients are misled, we ... recommend that the Government consider ways of ensuring that all those claiming to offer pregnancy counselling services ... indicate clearly in their advertising that they do not support referral for abortion." Furthermore, the Department of Health website advises readers that some pregnancy advice services "do not refer women for termination of pregnancy. We would advise women to check this before making an appointment."

⁶http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-Code-Item.aspx?q=Test_Specific+Category+Sections_11+Medicines%2c+medical+devices%2c+treatments+and+health_Rules
⁷<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmsctech/1045/1045i.pdf>

In light of the above, BCAP considered there to be a strong case on public health grounds to introduce a rule requiring PCAS that cannot directly refer women for a termination to make that fact clear in advertisements. However, BCAP considered that it would be disproportionate to extend to all PCAS the requirement to make clear that they *could* refer women for a termination or had a financial interest in women opting for termination. BCAP understood the concerns of organisations, both supportive and opposed to abortion, but considered that irrespective of the ethical stance of the organisation, it was only imperative on public health grounds that advertisements make clear to women whether the PCAS could refer them for a termination should they wish to have that choice available to them because any delay could increase the risk of health complications. There were not equally compelling health grounds to require PCAS that could refer women for termination to state that in advertisements because women seeking advice on unplanned pregnancy were likely to presume that, unless stated otherwise, organisations would be able to offer them a range of options for their unplanned pregnancy which might include termination.

BCAP therefore concluded that the introduction of the new rule was a proportionate response to the public health grounds raised. The text of the new rule states:

“Advertisements for services offering advice on unplanned pregnancy must make clear in the advertisement if the service does not refer women directly for a termination. Given that terminations are lawful only in some circumstances, and are subject to particularly stringent requirements in Northern Ireland, advertisers may wish to seek legal advice before advertising.”

Committee of Advertising Practice decision to change its Code

The Committee of Advertising Practice (CAP), the body responsible for setting, reviewing and revising the rules for non-broadcast advertising, presently collected in The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (The CAP Code), noted BCAP’s decision and its views on the consultation responses it received and has decided to introduce a corresponding rule in the CAP Code. CAP noted the strong public health grounds identified by BCAP for the introduction of a rule requiring PCAS to make clear if they do not refer women for a termination, and considered it is necessary and proportionate to introduce the same requirement in non-broadcast advertising: it did not see a reason for difference in regulation between broadcast and non-broadcast media given those grounds. CAP therefore agreed to introduce the following rule in the CAP Code:

“Marketing communications for services offering advice on unplanned pregnancy must make clear if the service does not refer women directly for a termination. Given that terminations are lawful only in some circumstances, and are subject to particularly stringent requirements in Northern Ireland, marketers may wish to seek legal advice.”

Conclusion

In reaching its decision, CAP and BCAP hope that the change to advertising rules will strike the right balance between the freedom of legally available PCAS to advertise, and the protection of audiences from advertising that may cause harm, offence or mislead. The Committees have carefully considered the responses they received to the 2009 and 2011 consultations and the social impacts of its proposed changes. The Committees consider that the new rules to require PCAS that do not refer women for termination to say so in their advertisements will further protect those members of the public who might wish to avail themselves of the service being advertised. This will ensure that there is transparency about what is being offered and prevent avoidable delays in giving advice and receiving treatment for those women who may wish to consider termination.

CAP and BCAP understand the strength of concern raised about its proposal and seeks always to ensure that the Advertising Codes remain relevant, effective, and proportionate. It is therefore open to new evidence about the implementation and effect of those rules. The Ofcom Content Board, who approved BCAP's proposed rule changes, has invited it to report back 12 months after implementation to see how the rules fare against BCAP's overall principle to ensure that advertisements do not mislead, harm or offend.