

## UK Government consultation on Online Advertising Programme

### Response from Obesity Action Scotland

Closing date: 8 June 2022

#### Introduction

Obesity Action Scotland welcomes the opportunity to respond to this consultation. In our response, we outline our concerns regarding online advertising of high fat, salt and sugar foods (HFSS) and discuss issues with current regulations for online advertising of these foods.

The scale of overweight and obesity in society emphasises the need for comprehensive action. The latest available data shows that in England, in 2019, 64% of adults had overweight and obesity. For obesity specifically, the figure is 28%<sup>1</sup>. In Scotland, the scale of overweight and obesity in the adult population is even greater, with two-thirds of adults living with overweight and obesity, and for obesity specifically the figure is 29%. Additionally, in Scotland, 29% of children are at risk of overweight or obesity<sup>2</sup>. Given this scale, it is imperative that action is taken to address online marketing of HFSS food and drink, and we do not believe the proposals outlined in the Online Advertising Programme (OAP) go far enough.

We welcome the restrictions introduced in the Health and Care Act, which recently received Royal Assent, to ban online advertising of HFSS foods, and introduce a 9pm watershed for TV advertising. However, we are extremely disappointed by the announcement on 14<sup>th</sup> May from the UK Government that the implementation of the ban on online advertising of HFSS foods (and the 9pm watershed for TV), as well as the ban on multi-buy and other price promotions of HFSS foods, are being delayed by at least a year to January 2024. This is particularly concerning, given the rising rates of child and adult overweight and obesity in both Scotland and the UK as a whole. It is disappointing that the UK Government have failed to recognise this impact and have failed to act to protect child and adult health. Given this delay in implementation of these crucial policies, it is now more important than ever that the provisions for online HFSS food advertising within the OAP are strengthened and robust, to ensure they properly protect children and other vulnerable groups from exposure to HFSS food advertising online. Indeed, a recently published World Health Organisation (WHO) Europe region report identified banning online advertising of unhealthy food to children amongst the most promising whole population policies for improving health and tackling overweight and obesity<sup>3</sup>.

---

<sup>1</sup> House of Commons Library (2022) Obesity statistics

<https://researchbriefings.files.parliament.uk/documents/SN03336/SN03336.pdf>

<sup>2</sup> Scottish Health Survey 2019 edition. Volume 1. Main report

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/09/scottish-health-survey-2019-volume-1-main-report/documents/scottish-health-survey-2019-edition-volume-1-main-report/scottish-health-survey-2019-edition-volume-1-main-report/govscot%3Adocument/scottish-health-survey-2019-edition-volume-1-main-report.pdf?forceDownload=true>

<sup>3</sup> WHO Regional Office for Europe (2022) European Obesity Report

<https://apps.who.int/iris/bitstream/handle/10665/353747/9789289057738-eng.pdf>

There remain several loopholes within the Health and Care Act, resulting in children (and adults) continuing to be exposed to high levels of HFSS food and drink advertising online. These include the ban only applying to product-specific and not brand advertising; only paid for advertising is included; and businesses with 249 employees and fewer are exempt. It is not clear from the consultation how or indeed if the proposals in this OAP will sit alongside the restrictions introduced in the Health and Care Act. This needs to be clarified. Furthermore, we believe, as with the Health and Care Act, there are several loopholes within the proposed OAP which means that children in particular, but also adults, will continue to be exposed to online HFSS food and drink advertising and marketing. It is welcome that the OAP goes beyond the scope of the Online Safety Bill.

We do not support the current approach of industry-led self-regulation for online advertising, and believe the system fundamentally needs to change towards stronger independent statutory regulation and enforcement. There is widespread evidence which shows that voluntary and industry-led regulation is ineffective, with industry protecting their own interests over public health and other considerations. We would like to see an approach to regulation for online advertising that is consistent with that currently in place for television advertising. As acknowledged in the consultation document, trust in advertising amongst the public has dramatically fallen in recent years, with more than 70% of people stating that they do not trust what they see on social media platforms<sup>4</sup>. Further, polling activity found that more than two-thirds (69%) of respondents support a ban of online advertising of HFSS food and drink<sup>5</sup>, with the same proportion agreeing that seeing junk food advertising contributes to childhood obesity<sup>6</sup>. This shows there is a clear appetite among the public and users of online services and platforms for change to advertising practices and regulations.

### **Scope of OAP**

Our answers in this section relate to questions 1 to 3 in the consultation.

Section 1.2 of the consultation document states:

*“The OAP will ensure that the regulatory framework for online advertising builds trust and tackles the underlying drivers of harm in online advertising”.*

This is welcome aim, however, there remain several issues with the OAP which will limit the achievement of this aim.

### ***Paid-for, owned and earned media***

The OAP is limited to only paid-for advertising and does not include owned media. This is a significant loophole. Organic posts on brands own social media pages can reach significant numbers of individuals, particularly if they have a large following. This is despite changes made by social media platforms to limit the reach of organic posts. For example, evidence shows on Facebook brands can still expect their posts to be seen by around 5.5% of their followers<sup>7</sup>. So, if we take the example of a major fried chicken retailer, who has over 55 million followers on their Facebook page, if a post was seen by 5.5% of their followers, this would equate to over 2 million people, which is significant reach and exposure. Therefore, focusing only on paid advertising misses key sources of advertising exposure for children, as they spend an increasing amount of time online and on social media platforms.

---

<sup>4</sup> <https://www.kantar.com/uki/campaigns/dimension>

<sup>5</sup> Obesity Action Scotland (2019) Public Support for Junk Food Advertising Restrictions <https://www.obesityactionscotland.org/media/1298/report-public-support-for-restricting-the-advertising-of-junk-food.pdf>

<sup>6</sup> Obesity Health Alliance (2019) Protect children from all junk food advertising, say health experts – and parents agree <https://obesityhealthalliance.org.uk/2019/02/28/protect-children-junk-food-advertising-say-health-experts-parents-agree/>

<sup>7</sup> Hootsuite blog post (2020) <https://blog.hootsuite.com/facebook-algorithm/>

The reach of owned media is often not subject to the same level of advertiser control as paid media, as 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.

Social media is widely used to promote food products via innovative techniques that disguise advertising content as native content, or gamification which encourages engagement and sharing. These typically include a link to purchase on a website, blurring the line between promotional content and ‘communications with the purpose of facilitating a transaction’. Further, the use of algorithms on social media can create a feedback loop displaying content similar to that previously interacted with. This will likely target high purchasers of HFSS products who may be more vulnerable to its influence.

Earned media is user-generated content that is not generated by the brands themselves and so is difficult to regulate. Indeed, as marketers continue to create advertising that appears ‘native’ to the platform or publisher on which it is served, the line between paid for and earned media increasingly blurs. 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.

We note Annex A details that the forthcoming Online Safety Bill includes advertising content which takes the form of organic, user-generated content. Whilst this is welcome, it remains unclear in the consultation how this will be linked with the proposals in the OAP and what impact it will have on limiting exposure to and the impact of owned media advertising of HFSS foods. This needs to be clarified.

It is welcome that the OAP will include paid-for influencer marketing in its scope, including payment in kind. Influencer marketing is mostly an unregulated area and is an increasingly used marketing technique globally. Influencer marketing features heavily on social media platforms, which are being increasingly used by children, and studies have shown that HFSS food marketing through these social media influencer channels has an immediate effect on children’s eating behaviour. This has resulted in a high level of exposure by children to marketing<sup>8</sup>. A study carried out in 2019, which assessed the effect of social media influencer marketing on children’s food intake found that children who viewed Instagram influencers with unhealthy snacks consumed significantly more calories and unhealthy snacks than those who viewed influencers with non-food products (448 vs 357kcal)<sup>9</sup>.

Including influencer marketing in the OAP is an important step, as it recognises this growing trend and the harms caused. In 2019, influencer sponsored posts accounted for one in four complaints to the Advertising Standards Agency (ASA)<sup>10</sup>, demonstrating the significance of the issue. It is welcome that this impact has been recognised within the consultation and that influencer marketing will be included with the OAP. This is something we have called for in previous consultations on the topic, and are pleased to see it has been included<sup>11</sup>.

---

<sup>8</sup> WHO Regional Office for Europe (2022) European Obesity Report

<https://apps.who.int/iris/bitstream/handle/10665/353747/9789289057738-eng.pdf>

<sup>9</sup> Coates A, Hardman C, Halford J (2019) Social Media Influencer Marketing and Children’s Food Intake: A Randomized Trial. *Paediatrics* 143:e2018254

<sup>10</sup> <https://www.thedrum.com/news/2020/06/03/influencer-posts-dominate-online-complaints-uk-ad-watchdog>

<sup>11</sup> <https://www.obesityactionsotland.org/media/1566/oas-online-hfss-ad-ban-consultation-response.pdf>

## **Brand advertising**

The marketing categories outlined in section 1.2.1 refer to 'paid for product specific' advertising. We would like to see this extended to include brand advertising more generally, rather than focusing only on specific products. Evidence shows that children as young as 3 years old have a significant level of brand awareness, and that brand knowledge is higher for unhealthy than healthy foods<sup>12</sup>. Focusing only on product specific advertising, therefore misses a significant amount of brand marketing that children are exposed to.

## **Factual content**

Another omission from the OAP is the issue of factual content, which is particularly relevant for HFSS food and drink advertising.

There is a grey area between what is considered a factual claim and what is considered a promotional claim. Certain factual claims may be highly influential promotional statements. It is important that we avoid the situation where an advert could appear for an HFSS product with a factual claim alongside it.

Marketers have gained experience at pushing the boundaries to create 'factual' claims that have an equally promotional effect<sup>13</sup>. Marketers will often create content specifically designed to maximise sharing and engagement with a wider audience and use clever copywriting techniques, attractive imagery and creative techniques to make their content appealing. Whilst we recognise that marketers need to be able to provide factual information on their social media channels, this information must only be available to those who seek it out and must not be able to be shared on channels beyond their control.

It is currently unclear if OAP will cover such content. If it does not, HFSS brands may invest in producing engaging, shareable 'factual' content for their own social media and marketing techniques would become focused on encouraging users to follow them on social media to maximise their 'owned' audience. As we know, brands have no reliable way to know the age of their followers, therefore, this presents challenges for protecting children from HFSS advertising online. This is a significant gap in the OAP and it needs to be addressed to ensure the potential loophole it creates cannot be exploited.

## **Harms caused by online advertising**

Our answers in this section relate to questions 6 to 8 in the consultation.

It is welcome that section 3.1 recognises that harms from online advertising arise from both the content and targeting or placement of adverts. The latter is particularly important for HFSS food products, with the targeting, or more appropriately mis-targeting, of children with adverts for these products causing significant health harm to children.

---

<sup>12</sup> Tatlow-Golden. M, Hennessy. E, Dean. M, and Hollywood. L (2014) 'Young children's food brand knowledge. Early development and associations with television viewing and parent's diet' *Appetite*, vol 80: 197-203 <https://doi.org/10.1016/j.appet.2014.05.015>

<sup>13</sup> WHO Regional Office for Europe (2018) Evaluating implementation of the WHO set of recommendations on the marketing of food and non-alcoholic beverages to children: Progress, challenges and guidance for next steps in the WHO Europe Region [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0003/384015/food-marketing-kids-eng.pdf](https://www.euro.who.int/__data/assets/pdf_file/0003/384015/food-marketing-kids-eng.pdf)

There is powerful and overwhelming evidence that advertising and marketing techniques strongly influence food preference and consumption in children and cause harm to their health<sup>14</sup>. Unhealthy food marketing is associated with a range of outcomes in children, including a greater awareness of advertised brands and products, the ‘normalisation’ of junk food consumption and unhealthy eating, increased preference for junk food, in particular for the products and brands advertised, and a lower overall intake of healthier food<sup>15</sup>. A recently published narrative review from the World Health Organisation<sup>16</sup> highlights the widespread reach and influence of marketing of HFSS products specifically to children. It found that over 50% of food marketed to children is unhealthy, with sugar-sweetened beverages, confectionary, and fast food the three most common types of unhealthy food groups marketed. The research showed such tactics are used more often to promote unhealthy products as opposed to healthy ones to young people. A key finding of the review was the positive association found between exposure to adverts and higher consumption of the advertised foods, demonstrating the significant impact that marketing activity can have on food choices and consumption patterns of children.

It is also associated with increased body weight, with the World Health Organisation stating that there is unequivocal evidence that childhood obesity is influenced by the marketing of HFSS food and drinks<sup>17</sup>.

Online advertising is rapidly developing and evolving, and spending time online is becoming an increasingly prominent feature in children’s lives. Data from Ofcom shows that in 2020/21, nearly all children aged 5-15 spent time online, with video-sharing platforms becoming an increasingly prominent feature. These platforms were used by 97% of 5-15-year olds in 2020<sup>18</sup>. It is well known that these platforms, such as YouTube, are a prominent source of adverts, with most videos featuring at least one advert. Specifically related to advertising, Ofcom found that less than half of children aged 8-15 who used search engines could correctly identify adverts in Google searches<sup>19</sup>. These findings highlight that stronger action needs to be taken to reduce both children’s exposure to online advertising and the harm it causes.

In the taxonomy of harms outlined in section 3.3, we note there is a category on legal but harmful content, where advertising of HFSS foods is referenced. It is welcome that HFSS food and drink is recognised in this category; however, it is very vague and doesn’t say what these harms are or what the impact of these harms are. We would like to see specific harms listed here in relation to this, including a recognition of health harms caused by such adverts, both physical and mental, as well as the wider societal impact of these harms.

Another significant issue in relation to HFSS food marketing, particularly to children, is mis-targeting. It is welcome that this is recognised and outlined in the consultation document; however, it is only

---

<sup>14</sup> Boyland E, McGale L, Maden M, et al. Association of Food and Nonalcoholic Beverage Marketing With Children and Adolescents’ Eating Behaviours and Health: A Systematic Review and Meta-analysis. *JAMA Paediatrics*. Published online May 02, 2022. doi:10.1001/jamapediatrics.2022.1037

<sup>15</sup> Boyland, Emma (2018) Written submission from Dr Emma Boyland, University of Liverpool COY0006. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-and-social-care-committee/childhood-obesity/written/81090.pdf>

<sup>16</sup> World Health Organisation (2022) Food marketing exposure and power and their associations with food related attitudes, beliefs, and behaviours: a narrative review <https://www.who.int/publications/i/item/9789240041783>

<sup>17</sup> WHO Regional Office for Europe (2016) Tackling food marketing to children in a digital world: trans-disciplinary perspectives. <http://www.euro.who.int/en/health-topics/diseaseprevention/nutrition/publications/2016/tackling-food-marketing-tochildren-in-a-digitalworld-trans-disciplinary-perspectives-2016>

<sup>18</sup> Ofcom (2021) Children and parents: media use and attitudes report 2020/21 [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0025/217825/children-and-parents-media-use-and-attitudes-report-2020-21.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0025/217825/children-and-parents-media-use-and-attitudes-report-2020-21.pdf)

<sup>19</sup> Ibid

mentioned in the context of alcohol and gambling adverts delivered to media disproportionately popular with children. HFSS foods are not listed here and this is a significant omission.

Under the current regulatory objective to minimise children's exposure age-restricted adverts, advertisers are advised to use audience targeting tools to ensure age-restricted ads are not served to children. With HFSS food advertising, however, it is clear this objective is not being met.

The current rules are weak and do not prevent children from seeing and being exposed to HFSS food advertising online. Under current rules, HFSS advertising is banned in media if it a) clearly appeals to children or b) more than 25% of the audience is under 16 years old. However, due to the difficulty enforcing these online, significant loopholes exist. For example:

- YouTube channels or social media influencers can be popular with people of all ages, leading to large numbers of children 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.
- Demographics of a social influencer's audience are not always available to advertisers. Additionally, children often access content and channels such as YouTube (age restriction of 13) via parents' accounts or watch without being signed in, rendering 'official' viewer demographic records meaningless.
- Age verification processes on social media platforms are weak and do not prevent children from using and accessing the platforms. In addition to children being able to access content through their parents' accounts, as discussed above, findings from a UK study suggests that a third of 9-12-year-olds have a Facebook profile<sup>20</sup>. Yet, this is despite Facebook, and other platforms, setting the minimum age for users at 13. This clearly demonstrates that age verification processes do not work and that platforms like Facebook have no awareness of the true age of many of their users, and so cannot protect them from exposure to advertising for HFSS foods and other harmful commodities. Additionally, research from Australia has shown consumer profile targeting to be only 59% accurate<sup>21</sup>, demonstrating that online targeting by age is not reliable and results in large numbers of children continuing to be exposed to HFSS adverts online.

Additionally, the algorithm approach used by many social media platforms raises concerns. A feedback loop is created, directing advertising content towards users who have previously viewed similar content. In this context, a social media user who follows an HFSS profile, who may be a child, who has previously engaged with HFSS-related content, may continue to be shown other HFSS content – from both the channel they follow and other similar content.

Recent research conducted by the Advertising Standards Authority (ASA) using avatars reflecting children online provides strong evidence on the unreliability of existing targeting methods. Researchers at ASA created 'Avatars', online profiles set up to represent children and adults of different ages, and sent them to over 250 websites and YouTube channels, in order to assess whether HFSS food and drink ads were still being targeted at children. They found that 2.4% of all ads were for HFSS products, and HFSS ads represented 70% of all food and drink ads seen during the monitoring period. Of those shown to children, 2.3% were for HFSS products. One third of the websites aimed at children (13/39) showed HFSS ads, with 43 ads shown in total. Worryingly, ads for HFSS products appeared on 20 of the 21 YouTube channels clearly aimed at children, with 490 ads shown in total across 55 YouTube channels aimed at children. The findings suggest that online advertisers are not doing enough to ensure that HFSS food adverts are not targeted at children and

---

<sup>20</sup> <https://www.theguardian.com/technology/2013/jan/23/facebook-admits-powerless-young-users#:~:text=However%2C%20there%20is%20no%20stringent,a%20quarter%20have%20Facebook%20profiles>

<sup>21</sup> Neumann N, Tucker C, Whitfield T (2018) How effective is black-box digital consumer profiling and audience delivery? Evidence from field studies

that age-gating policies are ineffective in this regard<sup>22</sup>. Targeting, or mis-targeting as the consultation terms it, of HFSS food adverts at children remains a significant issue and it is unclear from the consultation how the OAP would address this.

With regards to targeting vulnerable people, it is welcome that this has been recognised as a category of harm within the consultation for inclusion in the OAP. However, it is very vague and provides no information on what this means in practice. The primary issue here is what is meant by vulnerable and how this is defined. No definition is provided, so it is unclear which groups would fall into this category. There needs to be a clear definition of who are regarded as vulnerable people for the purposes of the OAP and specific practices targeted at them. There is also no mention of HFSS food advertising within this category.

Although much of the analysis on harms from online HFSS food marketing is rightly focused on children, it is important to both remember and acknowledge that adults are also impacted. Therefore, restrictions on online HFSS food advertising would bring about significant health benefits for adults<sup>23</sup>. It is also important to acknowledge that vulnerability can be transient and an adult may be vulnerable to marketing from a particular type of product at a particular point in time. For example, high levels of online HFSS food marketing is likely to be unhelpful during attempts to lose weight.

## **Regulation**

Our comments in this section relate to questions 12 to 16 in the consultation.

The current system of self-regulation of advertising in the UK is inappropriate. The current system of regulatory oversight relies primarily on public complaints, and the responsibility for online advert content and placing falls primarily to advisers – this is inappropriate and needs to be changed as a priority.

It is welcome the consultation document recognises that the current system of self-regulation is ineffective and needs to be changed. Indeed, evidence presented in section 3.2.1 shows that a significant proportion of actors want to see a ‘beefing up’ of the regulatory system and for there to be better powers of enforcement – 60% of advisers and 60% of regulators/industry reported in the survey carried out that the current self-regulatory system is poor. Concerningly, however, just over two-thirds of online platforms deemed the current system as good. This is problematic, as such online platforms are major drivers of many of the harms experienced, and demonstrates a disregard by them to engage in regulatory reform processes.

Point 2 in section 3.2.1 of the consultation document (mapping online advertising issues, and industry and regulatory initiatives) states *“Outside of the ASA, there is no independent measure for the effectiveness of the self-regulatory system. Without a requirement for organisations to share data there will continue to be an issue around transparency and accountability. The ASA does not have information gathering powers (as there is no underpinning legislation for this), meaning any cooperation from industry is based on goodwill.”* We strongly support this statement as it clearly demonstrates the current problems with the self-regulatory system. It is inappropriate for the regulation of online HFSS food advertising and other content to be dependent on the goodwill of

---

<sup>22</sup> Advertising Standards Authority (2021) Protecting children in mixed-age online media. Targeting age-restricted ads away from children. An ASA Monitoring and Enforcement Report

<https://www.asa.org.uk/static/6d5593da-4b5e-43c4-82f97598dac03019/Mixed-Age-Avatar-Report.pdf>

<sup>23</sup> Boyland E (2019) Unhealthy food marketing: the impact on adults <http://obesityhealthalliance.org.uk/wp-content/uploads/2019/05/JFM-Impact-on-AdultsBoyland-May-2019-final-002.pdf>

industry actors. Evidence from a study carried out by Tatlow-Golden and Parker<sup>24</sup> shows that the UK Government Department for Health significantly underestimated the scale of digital marketing of unhealthy food that children in UK were exposed to, and subsequently, significantly underestimated the impact of unhealthy food advertising restrictions on health. These findings exemplify the problem with the current regulatory and monitoring systems.

Point 3 in the same section states “*Currently, the ASA’s self-regulatory system for non-broadcast advertising primarily applies to advertisers with limited application to other actors in the supply chain. Whilst others - e.g. online platforms - have their own standards and codes to adhere to, there is no single regulatory body or organisation that is specifically responsible for ensuring these issues are enforced effectively or reporting on whether they are sufficiently tackling the issues they seek to address.*” We welcome this statement as it recognises the current system is not fit for purpose and recognises disparities between online and TV advertising, with the latter subject to more stringent standards and codes of practice.

We **strongly agree with the rationale for intervention** outlined in the consultation, that a **lack of transparency and accountability** in online advertising are the main drivers of harm found in online advertising content, placement, targeting and industry harm. We believe there should be a **full statutory regulatory system** for online advertising of HFSS food and drink, and would support an approach consistent with that currently in place for TV advertising.

Our preferred form of regulation is **full statutory regulation based on the principles outlined above**, which most closely aligns to option 3 outlined in section 6 of the consultation.

### ***Fines and enforcement***

We would support an approach to enforcement that encompasses the following principles:

- Regular proactive monitoring to identify non-compliance: The success of this restriction cannot rely on reactive complaints alone. Proactive monitoring should be carried out by an independent group with full details on breaches published and pursued for enforcement.
- 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 noncompliance, financial penalties are needed as a meaningful deterrent.
- Full transparency: Full details on all complaints, investigations and resolutions should be publicly available and regularly analysed to identify any improvements needed in the legislation.

In order for any regulatory policy and system to be effective, it must be correctly enforced and this can include through the use of fines for example. The current list of sanctions that the ASA can place on advertisers, as detailed in section 4.1.2, needs to be strengthened. Sanctions such as naming and shaming, disqualification from awards, and denial of media space, for example, are likely to have a limited disincentive effect to online advertisers from breaking the rules. We would like to see the list of sanctions updated to include meaningful deterrents, such as fines and timely enforcement.

Regulatory controls apply retrospectively, after advertisements have already been seen. This can result in large numbers of children seeing inappropriate advertising before action is taken. The lack of meaningful penalties or deterrents means there is little to fear from misapplying the codes of practice. Further, we would like to see a commitment to fines being issued for non-compliance and for investigations to be undertaken with a given time period to ensure any enforcement action is as

---

<sup>24</sup> Tatlow-Golden, M., & Parker, D. (2020). The Devil is in the Detail: Challenging the UK Department of Health's 2019 Impact Assessment of the Extent of Online Marketing of Unhealthy Foods to Children. *International journal of environmental research and public health*, 17(19), 7231. <https://doi.org/10.3390/ijerph17197231>



timely as possible. There should also be a commitment to penalise a breach based on the content of the advert at the time it was subject to the breach, not what the advert is now. The retrospective nature of the regulatory control system often means that by the time a breach is investigated, it is no longer deemed as relevant as the particular advert in question is no longer being shown or has been changed in some way.

Another issue with current regulatory system is the lack of a coherent framework for members of the public to report online advertising issues. In other words, it is challenging to understand what course of action can be taken when an issue is reported. There needs to be a more coordinated and clearly signposted mechanism for consumers to report inappropriate adverts and to seek redress as a result. It is not clear how the proposals outlined in the OAP will address this, if at all.

We believe all online advertising should be subject to the same level of regulatory control. A straightforward system where all actors are held accountable is preferred and helps to ensure certain actors are unable to shirk their responsibilities. In terms of defining what we mean by an advertiser or advertising actor, as a major portion of food and drink advertising online is delivered by organisations selling food on behalf of brand owners, it is imperative that the definition of 'advertiser' be broader than the food or drink brand owner themselves, and should include food delivery platforms such as Just Eat, Deliveroo and Uber Eats along with larger retailers. Numerous smaller retailers also sell branded HFSS food products as part of hampers or gifts, so all players should be captured by 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.

We do not believe the ASA should be responsible for the day-to-day regulation of online HFSS food and drink advertising, as we have concerns about the impartiality of the ASA. For example, the way that ASA are reporting breaches makes it impossible to understand the extent and prevalence of the breaches, does not allow public scrutiny, and 'hides' those that breached the code. Specifically, the ASA rarely fully investigates HFSS advertising complaints, choosing instead to 'informally resolve' them. Informally resolved complaints are not being published on the ASA website and there is no record of them. Therefore, there should be a requirement for the ASA to regularly publish full details of complaints received and how they have been resolved. As a minimum, it is vital that full details are made public, even on complaints that are informally resolved, so the ASA's approach to regulation is transparent and can be scrutinised by stakeholders. Failure to deliver such an approach to regulation will undermine the very principles of transparency and accountability which the consultation outlines as the rationale for intervention.

### **About us**

Obesity Action Scotland provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland.

For any enquiries relating to this submission, please contact Jennifer Forsyth  
[jennifer.forsyth@obesityactionscotland.org](mailto:jennifer.forsyth@obesityactionscotland.org)