Dear Ed

In May this year, you wrote to me about Ofcom’s new analysis of children’s exposure to alcohol advertising on TV and posed two questions for BCAP:

- is the current approach to identifying which programmes should exclude alcohol advertising working properly?; and
- is the current approach sufficiently comprehensive, given that much of children’s viewing is not to children’s programmes, but to programmes of broader appeal, in which alcohol advertising may be permitted?

First of all, I’d like to thank you and your colleagues for conducting the analysis and raising these matters with us. We share your concern to ensure that alcohol advertising is responsible and that young people are protected by our regulation. Your analysis and challenge has afforded us a timely and helpful opportunity to re-examine the current approach to restricting alcohol advertising by means of scheduling rules and, within that, the notion of “particular appeal”. This process has involved an extensive dialogue with broadcasters and the wider industry, examining the current regime and actual market practice in scheduling.

Importantly however, our consideration of this issue has not only been informed by our and industry’s perspectives: in addition, the Advertising Advisory Committee (AAC) has provided a consumer perspective to BCAP’s policy work as it does on all our regulatory activities. I shall refer to specific comments from the AAC later in this letter and, of course,
to what we have learned from the ASA’s investigations, which have made a vital contribution to our work. Finally of course, we have been grateful for the expert perspective provided by members of the Ofcom Executive, who participated in our dialogue with broadcasters and wider industry.

The result of our policy work is two pieces of action that will clarify and improve regulation. First of all, we are strengthening and expanding BCAP’s guidance on audience indexing and the approach to identifying programmes from which to exclude alcohol ads, in order to give broadcasters greater assistance in complying with our scheduling rules; and second, the ASA will step up its monitoring activity to make sure the rules are being appropriately followed by broadcasters: BCAP will review the results.

**Improved guidance**

We are grateful to colleagues at Ofcom for their involvement in developing the first of those proposals with broadcasters, namely an improved and more detailed Television Guidance Note on the identification of television programmes likely to appeal to children and young people for broadcasters to follow. As I mentioned above, we have engaged in an extensive dialogue with industry to examine actual market practice and assess what issues remained unaddressed in our existing guidance: the result is a much expanded and improved document which should give broadcasters much greater confidence in their scheduling decisions. The guidance is very much a living document that may yet benefit from incorporating learnings from current and future ASA investigations: we intend to share it with you as soon as the full BCAP committee has had the opportunity to consider and approve it at their 13 November meeting. We would then hope to publish the guidance by early December.

The expanded BCAP guidance on audience indexing will include:

- A refinement of BCAP’s understanding of audience indexing as a predictive tool
- Advice on how to adjust scheduling to a changing viewing profile in for example a TV series
- Advice for smaller broadcasters for whom indexing is difficult given small audience sample sizes
- Advice on taking account of scheduling across primary, +1 and HD channels
- Advice on programmes that appear at different times in the schedule
- Advice on new or one-off programmes and features
- Advice on long-form programming where the profile may change over the course of one programme
- More detail on other factors broadcasters may take into account besides audience indexing when predicting the likely audience profile

**Enhanced monitoring**

The second proposal relates to the ASA’s commitment to repeating its recent monitoring and enforcement exercise in 2014. Given our concern to get this right, BCAP will review the outcome of that exercise to ascertain whether further changes to the Guidance are necessary.
I should say that the ASA adjudications to which Guy Parker has already drawn your attention, together with the discussions between broadcasters that BCAP has convened since May, have served as a great test of the effectiveness and value of the co-regulatory system as well as of the present approach to audience indexing.

As you would expect, we have not taken these decisions lightly. Throughout, we have been guided by the regulatory principles we share with Ofcom, and in particular the principles under which regulatory activity should be proportionate, consistent and targeted where action is needed. Further, this work is informed by our aim to make sure that children and young people are afforded protection by the BCAP Code. Finally, we have been careful to assess all the research and evidence.

Evidence
Thanks to Ofcom’s efforts and the recent ASA investigations into alcohol scheduling, the evidence before us now is more extensive and different in nature than what was available in May. At that time, your research found that the number of TV alcohol ads seen by 4-15 year olds had increased from 2.7 per week in 2007 to 3.2 per week in 2011, in line with the increase in their total viewing of TV ads over that time. Although there was considerable fluctuation within that five year period, exposure did not appear to have matched 2007 levels at any point since then.

The data provided to us most recently now shows that, in 2012, exposure levels went back down to 2.8 ads per week seen by 4-15 year olds. Alcohol impacts constituted 1.4% of the total commercial impacts on 4-5 year olds in 2007: Ofcom’s most recent research shows that, in 2012, the share was 1.3%. Although an extra year has not made it any easier to discern any long-term trend, it does cause us to reflect on what level of increase should prompt regulatory change, for example of the kind envisaged in your second question.

Regulatory principles: proportionality and targeting of action
One of the main conclusions of our deliberations is that we believe that the existing approach to scheduling alcohol advertising is the right approach, subject, of course, to the improvements in process and transparency we’ve outlined above. Our policy objective is to create a Code that protects children and others whose circumstances seem to put them in need of special protection, while maintaining an environment in which responsible broadcast advertising can flourish.

In line with better regulation principles, we believe the rules must be transparent, accountable, proportionate, consistent, and targeted only where regulation is needed. As part of our assessment, we took into account all of the relevant protections afforded by the BCAP Code, including the strict rules governing the content of alcohol advertising, which prohibit the strong appeal of content to children and young people.

On this issue, the proportionality and targeting of regulatory intervention are particularly important. Targeting action where needed requires an evidence-based approach based on understanding the effect and reach of advertising. Our evaluation of the ScHARR Review found that the evidence supporting a link between alcohol advertising and increased consumption remained equivocal and incomplete. Moreover, as you and I both noted in our correspondence earlier this year, there are wider positive indications about the trends
in youth drinking, with the number of 11-15 year olds who reported having had an alcohol
drink in the past week halving between 2001 and 2011. The AAC placed particular
emphasis on the need for action to respond to the evidence base in this area.

As to the reach of advertising, the research now available to us does not indicate that
programmes of broader appeal attracting large numbers of child viewers have resulted in a
significant rise in the exposure of children and young people to alcohol advertising. This is
despite children watching TV later in the evening and watching more commercial channels.
It is true that exposure levels have fluctuated and are likely to continue to do so, although I
hope that the proposals I have outlined above will contribute to a continued, targeted
decrease. In any case, while we remain committed to a continual effort to ensure our rules
are fit for purpose, the overall level of exposure since 2006 has never reached a level that
we would consider sufficient to necessitate change to the present approach. Again, we
have been confirmed in this view by comments from the AAC.

Proportionality, meanwhile, requires policy measures that respond to the need to limit
children and young persons’ exposure to alcohol advertising while avoiding “a significant
intrusion on adult viewing” that would disproportionately “limit advertisers’ ability to reach a
legitimate audience for their products”. Those words, from Ofcom’s 2007 November
Statement on measures to reduce children’s exposure to HFSS advertising, articulate what
the policy of indexing manages to avoid in terms of disproportionate regulatory intervention.
Any policy move seeking to exclude alcohol advertising from programmes of “broader
appeal” that are watched by a predominantly adult audience would, in our view, run counter
to this principle.

Adults should be able to view responsible advertising for products of legitimate interest to
them, but in cases where the elimination of child impacts does not significantly outweigh
the reduction in adult impacts that proportionality will have been lost. There is also the
possibility that ad spend displaced from a small number of programmes of broader appeal
towards a greater number of programmes with a narrower appeal may result in no actual
meaningful reduction in the total number of impacts but only their dispersal.

The notion of intrusion into adult viewing also influences BCAP’s thinking on the findings
about changing viewing patterns among older children and the usefulness of the current
approach to scheduling. The research suggested that viewing by older children to adult
commercial channels now peaks after 9pm, when there is a greater concentration of
alcohol advertising. The 120 index gives broadcasters the capacity to determine
programmes of particular appeal to a youth audience at any time of day, including beyond
9pm, and exclude alcohol advertising from those programmes.

Finally, we also carefully considered the supplementary research your colleagues provided
that modelled the potential for change in exposure levels if the index were set elsewhere
than at the present level of 120 (for example at 100/105/110/115). The ASA’s recent
enforcement work has revealed to us how difficult it is to establish the relation between
impacts, incidences of a 120 indexing child audience profile, and breaches of the BCAP
Code. The supplementary research, which talks only in terms of a reduction in impacts,
cannot give a clear picture of the real reduction in children and young people’s exposure to
alcohol advertising that might be delivered by changes to the index. In any case, we
believe that the 120 index continues to describe the appropriate limit beyond which it is proportionate to prevent a given audience profile from seeing alcohol advertising, because it represents an adequate level of bias to be robust enough to rely on as meaningful and unavoidably real.

I hope you are reassured by our proposals for change and the thoroughness of our process and exploration in ensuring appropriate protections both for children and young people and for responsible advertising practices. I would like again to express our thanks to you and your colleagues for your analysis and collaboration on this piece of work, the benefits of which will no doubt extend beyond alcohol advertising. I shall write to you again with details of the updated guidance and the results of our 12 month monitoring exercise.

Yours sincerely

James Best
Chairman