
OFCOM TV ADVERTISING OF FOOD AND DRINK TO CHILDREN



Consultation Response

29th June 2006

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Introduction

The Food Ethics Council is an independent champion for better food and farming. Our recent work includes *Getting personal*, a report on how the state, industry and citizens share responsibilities for nutrition and public health.¹

We welcome the opportunity to respond to Ofcom's consultation on *Television advertising of food and drink to children: options for new restrictions*.² We have confined our comments to Question 5 of the consultation, which concerns the regulator's initial decision to exclude from full consideration the option of banning all advertising before the 9.00pm watershed for foods high in fats, salt and sugar. This is the option favoured by the Food Standards Agency, as well as by many health charities and children's groups. While we remain perplexed that this option was not initially included in the consultation, we welcome Ofcom's recent reported commitment to give it serious consideration.

Q5. Do we agree that the exclusion of all HFSS advertising before 9.00pm would be disproportionate?

No. We believe that the exclusion of all HFSS advertising before 9.00pm is the right option.

We welcome Ofcom's recognition that this option would deliver the greatest benefits to children's health. We disagree with the regulator's opinion that it would "impose a disproportionate impact upon broadcasters". Since the consultation paper contains little explanation of how Ofcom came to this opinion, we have considered four different senses in which the impact of this option might be considered disproportionate and, in each case, we remain unconvinced of the case against this option:

¹ Food Ethics Council (2005) *Getting personal: shifting responsibilities for dietary health*. Food Ethics Council, Brighton.

² Published on 28th March 2006 and updated on 8th June 2006.

1. The public considers the impact disproportionate

Ofcom reports that a pre-watershed ban on HFSS advertising was a relatively low priority for the parents it surveyed, with 48 per cent favouring such an approach. Its July 2004 *Childhood obesity* report contains further details of the quantitative and qualitative research that was undertaken.

Ofcom takes a 'glass half-empty' view of this finding, implying that 48 per cent is a low proportion of parents. However, it is twice the proportion of parents who opposed a pre-watershed ban on HFSS advertising.³ If Ofcom really wants to take a lead from its public opinion research in deciding whether or not a pre-watershed ban on HFSS advertising is proportionate, then the evidence it has gathered already suggests that parents do favour such a measure, even if it is not their immediate top priority.

Furthermore, however, as far as we can understand from the information provided in that report and in the consultation document, neither the survey nor focus groups included detailed discussion of the costs and benefits of the different regulatory options. It has been well-established that people can come to quite different conclusions when they are given the opportunity to scrutinise and deliberate on problems in detail. When a controversial ethical issue is at stake – how to weigh children's health against advertising revenue – it is this considered public opinion rather than people's immediate reactions that has real value in informing decision-making.

We understand that further qualitative and deliberative research is under way and we urge Ofcom to ensure that it provides ample opportunities for participants to discuss the pros and cons of different options in detail and to be exposed to a diversity of outside views on the matter. We recommend Ofcom to the guidance on good practice in public engagement compiled by Involve.⁴ In the meantime, the public opinion data provided by Ofcom is of interest but it provides no grounds for concluding that the public at large consider the impact of any regulatory option on broadcasters to be "disproportionate".

2. The cost is out of proportion to the benefits

A second possibility is that Ofcom considers the costs of a pre-watershed ban on HFSS advertising to outweigh the benefits. The estimates provided in the consultation paper and in the update published on 8th June indicate that, depending on how the value of life is calculated, either the costs and benefits are comparable or the balance falls in favour of a ban.

³ Ofcom (2004) *Childhood obesity – food advertising in context*. Ofcom, London: 149.

⁴ Involve (2005) *People and participation*. Involve, London.

Ofcom notes that television advertising only has a modest effect on children's food choices. That does not alter the balance, however, because it is already factored into the estimates of benefit.

As a public regulator, Ofcom's duty is to serve the public interest. As it says, it also has a responsibility to treat the industry it regulates fairly. Ultimately, however, it is obliged to do so *only* insofar as this supports the public interest – for instance through benefits to the economy – rather than because companies have ethical standing as such.

Hence, more appropriate than weighing the public health and social benefits of a particular regulatory option against the private costs, would be to weigh the public benefits against public costs. How, if at all, will the costs falling to broadcasters be detrimental to the public interest? If Ofcom considers the balance of costs and benefits to be an important factor in its decision, it should attempt to estimate the public costs of the additional regulatory burden on broadcasters. That way, it will get a step closer to comparing like with like.

3. It unfairly penalises broadcasters compared with other groups who shape what children eat

An alternative interpretation of Ofcom's opinion that a pre-watershed ban on HFSS advertising would be disproportionate is that this option might be seen to penalise broadcasters compared with other groups who shape what children eat. This view rests on faulty logic and weak evidence.

The logic is faulty because it ignores the fact that the purpose of the regulation is to mitigate a serious public harm. It is analogous to the argument that it is unfair to catch fraudsters unless we can catch burglars too – clearly the aim should be to hold both to account for the harm they do, but a failure to deal with one group causing harm is no excuse for ignoring the other.

The evidence is weak in the sense that many of the other groups who shape what children eat are in fact being held increasingly to account for their responsibilities towards children – not to harm children and, indeed, to encourage healthy eating – in ways that come at some cost. Ofcom's task, surely, is to do all within its capacity to ensure that broadcasters play a leading role in this wider effort to protect the interests of children as vulnerable consumers.⁵

4. The extra benefits of this option compared with the next best option come at relatively high cost to broadcasters

A final possibility is that Ofcom considers the extra public benefits associated with a pre-watershed ban on HFFS advertising to be disproportionately costly compared with the public benefits expected from the next best option. Indeed, the cost and benefit estimates provided

⁵ MacMillan, T., Dowler, E. Archard, D. (2005) Corporate responsibility for children's diets. CCELS, Cardiff. Available at <http://foodethicscouncil.org/files/ccelscorporateresp.pdf>.

by Ofcom support the view that the extra benefits of the pre-watershed ban on HFFS advertising do indeed come at a higher cost to broadcasters.

Looking at the issue from the point of view of a broadcaster, the extra public benefits thus come at a relatively high cost. In effect, they would offer lower value for money to a broadcaster seeking to contribute to better health for children. But Ofcom is not a broadcaster – it is a regulator charged with acting in the public interest, not with offering value for money to the industry it oversees.

Furthermore, it is vital to remember that behind the figures for Quality Adjusted Life Years are real children with real health problems. The UK is signed up to the UN Convention of the Rights of the Child which, irrespective of Ofcom's own specific remit, legally obliges the regulator to do all it can to provide a full and healthy life to all children. That includes the extra children who would benefit from a pre-watershed ban on HFSS advertisements, even if their health costs broadcasters more.

About the Food Ethics Council

The Food Ethics Council is a registered charity (No. 1101885). Our members are:

- **Ms Helen Browning:** (Chair) Organic farmer; Food and Farming Director, Soil Association
- **Prof Ruth Chadwick:** Director, ESRC Centre for the Economic and Social Aspects of Genomics, University of Lancaster
- **Dr Elizabeth Dowler:** Department of Sociology, University of Warwick, researching food and social policy
- **Ms Jeanette Longfield:** Coordinator of Sustain – the alliance for better food and farming
- **Dr Peter Lund:** Senior Lecturer, School of Biological Sciences, University of Birmingham
- **Prof Ben Mepham:** Department of Policy Studies, University of Lincoln; Centre for Applied Bioethics, University of Nottingham
- **Prof Kevin Morgan:** Director, Regeneration Institute, Cardiff University
- **Dr Kate Rawles:** Freelance consultant
- **Dr Doris Schroeder:** Reader in Ethics, Centre for Professional Ethics, University of Central Lancashire
- **Mr Geoff Tansey:** Freelance writer and consultant
- **Mr Colin Tudge:** Freelance writer and broadcaster
- **Mr John Verrall:** (Treasurer) Pharmaceutical chemist

Further information about the Council, including a list of publications, is available on our web site (www.foodethicscouncil.org).

We would be glad to discuss these comments. For further information about this document please contact Dr Tom MacMillan, Executive Director, by emailing tom@foodethicscouncil.org or telephoning 01273 766654.