

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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**SUBMISSION FROM VOICE OF THE LISTENER & VIEWER TO
THE DCMS CONSULTATION ON TOTAL BAN
OF ONLINE ADVERTISING FOR UNHEALTHY FOODS**

December 2020

INFORMATION ABOUT THE VLV

The Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

INTRODUCTION

1. VLV welcomes the opportunity to contribute to the Government's consideration of its proposals to implement a total ban on HFSS advertising on online platforms.
2. VLV supports the Government's objective to reduce obesity among the UK population.
3. We limit our responses in this submission to issues in which VLV has expertise, namely in regulation related to broadcasting.
4. VLV notes that research shows that obesity is rising as a result of a combination of factors: a reduction in physical activity, poor eating habits, declining food prices and a rise in the availability of convenience food – all of which are exacerbated by poverty.
5. It is instructive to consider the impact of existing HFSS advertising restrictions, even though they apply only to television advertising. They indicate that without a holistic approach they have had little impact on obesity in the UK. VLV opposed the ban on HFSS advertising on television on the basis that a wider-ranging, more holistic approach would be required if obesity was to be addressed.
6. While VLV therefore supports in principle the Government's more multi-faceted approach in its current obesity strategy¹, we believe that the present proposal falls short of what is required.
7. VLV still questions why the objective of the policy under consideration is to restrict children's exposure to online HFSS advertising since children generally do not control which food and drinks are bought.
8. With reference to advertising regulation, VLV believes that any approach to restricting HFSS product advertising should be platform-neutral. Following the ban of

¹ <https://www.gov.uk/government/publications/tackling-obesity-government-strategy/tackling-obesity-empowering-adults-and-children-to-live-healthier-lives>

HFSS adverts around children's programming, Ofcom found that TV advertising spend declined in the years 2005-2009 but spend on press, online, outdoor and cinema advertising increased.² VLV is concerned that if a restriction on HFSS advertising is imposed on online platforms, advertisers will simply displace their promotions onto radio, print media, cinema, billboard and outdoor advertising. It is notable that other advertising platforms are not within the scope of this consultation. VLV does not believe any policy decision on whether to increase restrictions on TV and online advertising should be taken without taking into consideration other advertising platforms which could influence obesity rates.

9. VLV welcomes the plan in the obesity strategy to legislate to regulate the promotion and marketing of HFSS products by volume and location both online and in store in England; this was a proposal which VLV supported in previous submissions on HFSS advertising restrictions.
10. VLV is concerned that the commitment expressed by the Government at the launch of its obesity strategy will need to be maintained in the longer-term if this strategy is to succeed. This means that sufficient funding will need to be provided consistently in the long-term to ensure behaviour change and progress will need to be constantly monitored so that adjustments to the strategy can be made as necessary to ensure it continues to be effective.
11. VLV believes special effort also needs to be taken to target areas where there is greater need. There appears to be a 'divide' between those who are more aware of healthy lifestyles and those who are not and these appear to correlate with household income.

The role of the UK's public service broadcasters

12. VLV would urge the Government to collaborate with the UK's public service broadcasters so that important messages about healthy lifestyles reach the widest possible audience.
13. Television has huge power to influence people's lifestyles positively. Broadcasters already play a part in helping to combat the problem of childhood obesity through behaviour change campaigns, current affairs documentaries and support and advice in discussion and entertainment programmes.
14. There are numerous programmes and campaigns which have fostered and continue to foster greater awareness and a positive attitude towards food, cooking and eating on TV and radio, such as ITV's *Daily Mile* and programmes aimed at children by Channel 5 and the BBC.

² *Advertising Regulation and Childhood Obesity*, Lunt and Livingstone, August 2014.
<http://sk.sagepub.com/books/media-regulation/n7.xml>

Consultation Questions

1. Do you support the proposal to introduce a total online HFSS advertising restriction?

VLV does not support the current proposals because we do not believe the Government should impose a ban on online advertising of HFSS products unless this ban is platform-neutral and applies to all advertising platforms.

Unless a ban applies to all platforms it is likely that businesses will increase other promotional activity in order to maintain demand for their products, including increased advertising in print media, cinema, billboard and outdoor advertising. It is notable that the scope of the current consultation does not include these other forms of advertising.

Additionally VLV questions whether effective regulation of online platforms will be possible since most online platforms are controlled by corporations based outside the UK which operate on a global basis. VLV has long believed that regulation governing online content should be better enforced. Currently self-regulation by online platforms is deficient and platforms are not responsible for the adverts placed on them.

Scope

2. We propose that the restrictions apply to all online marketing communications that are either intended or likely to come to the attention of UK children and which have the effect of promoting identifiable HFSS products, while excluding from scope:

- **marketing communications in online media targeted exclusively at business-to-business. We do not seek to limit advertisers' capacity to promote their products and services to other companies or other operators in the supply chain**
- **factual claims about products and services**
- **communications with the principal purpose of facilitating an online transaction**

As stated above, VLV questions why the proposed policy under consideration aims to address advertising content aimed at children since it is not generally children who control which food and drinks are consumed by them.

3. Do you foresee any difficulties with the proposed approach on types of advertising in scope?

VLV understands that this policy will mean some healthy products, such as avocados and hummus, which are high in calories will not be able to be advertised online.

4. If answered yes, please can you give an overview of what these difficulties are?

See response to question 3.

- 5. Do you agree that for the purpose of a total online advertising restriction for HFSS products, the term 'advertiser' should be defined as a natural or legal person, or organisation that advertises a product or service?**

No comment.

- 6. Do you agree that for the purpose of appropriate measures, the term "online service providers" should include all internet services that supply services or tools which allow, enable or facilitate the dissemination of advertising content?**

Yes.

- 7. Our proposed exemption for factual claims about products and services would include content on an advertiser's social media. Do you agree with this approach?**

This approach is possibly too nuanced and will lead to the need for a significant increase in monitoring by platforms or the regulator if this policy is to be effective. As stated in the consultation paper, 'we note in this context the regulatory challenges arising from having to make a distinction between factual claims and promotional claims'.³

- 8. We propose that any advertisers which sell or promote an identifiable HFSS product or which operate a brand considered by the regulator to be synonymous with HFSS products should be required to set controls which ensure that their posts regarding HFSS products can only be found by users actively seeking them on the advertisers own social media page. This could be achieved, for example, by ensuring that the privacy settings on their social media channels are set so that their content appears on that page only. Do you think this would successfully limit the number of children who view this content?**

VLV agrees that limiting the visibility of HFSS advertising by making it visible only by those who actively search for it is likely to limit the number of children who view this content, however, as stated above, it is not generally children who control which food and drinks are consumed by them.

- 9. In your sector or from your perspective, would a total restriction of online HFSS advertising confer a competitive advantage on any particular operator or segment of the online advertising environment?**

No comment.

- 10. If answered yes, are there steps that could be taken when regulating an online restriction to reduce the risk of competitive distortions arising?**

N/A

³ <https://www.gov.uk/government/consultations/total-restriction-of-online-advertising-for-products-high-in-fat-sugar-and-salt-hfss/introducing-a-total-online-advertising-restriction-for-products-high-in-fat-sugar-and-salt-hfss#annex-a>

11. We are proposing that broadcast video on demand (BVOD) is subject to a watershed restriction as Project Dovetail will mean they have BARB equivalent data. Do you know of other providers of online audience measurement who are able to provide the same level of publicly available assurance with regard to audience measurement?

No.

12. If answered yes, do you think that platforms or advertisers using those forms of audience measurement should be subject to a similar approach as BVOD?

N/A

Enforcement and liability

13. What sanctions or powers will help enforce any breaches of the restriction or of the appropriate measures requirements by those in scope of this provision?

No comment.

14. Should the statutory "backstop" regulator for HFSS marketing material be:

- a. a new public body
- b. an existing public body
- c. I don't know

No comment.

15. If answered b, which body or bodies should it be?

No comment.

16. Do you agree that the ASA should be responsible for the day-to-day regulation of a total online HFSS advertising restriction?

Yes. It is the best placed body already in existence to do so.

17. Do you agree with our proposal that advertisers are liable for compliance with a total online HFSS advertising restriction.

Yes.

18. Do you consider that online service providers should be prohibited from running advertising that breaches the restriction or should be subject to a requirement to apply appropriate measures?

Online service providers should be prohibited from running advertising which breaches the restriction if it is imposed. VLV has long argued that online advertising should be subject to the same regulation as advertising on broadcasting platforms.

19. If answered b, please expand on what you consider these measures should be.

N/A

20. Do you consider that the sanctions available (voluntary cooperation and civil fines in instances of repeated or severe breaches) are sufficient to apply and enforce compliance with a total online HFSS advertising restriction?

Yes.

21. Do you consider that the imposition of civil fines by the statutory regulator is sufficient to enforce compliance with the appropriate measures requirements?

Yes.

22. Would a total restriction on HFSS advertising online have impacts specifically for start-ups and/or SMEs?

No comment.

23. What, if any, advice or support could the regulator provide to help businesses, particularly start-ups and SMEs, comply with the regulatory framework?

No comment.

24. We note the challenges of applying statutory regulation to overseas persons. It is our intention to restrict the HFSS adverts seen by children in the UK. From your sector or from your perspective do you think any methods could be used to apply the restriction to non-UK online marketing communications served to children in the UK?

No comment.

25. Do you see any particular difficulties with extending the scope to non-UK online marketing communications as well as UK communications?

Many of the digital corporations which control online platforms available in the UK are not based in the UK. This could present challenges for them because they would have to tailor the management of their platforms specifically for UK users.

26. Do you see any difficulties with the proposed approach in terms of enforcement against non UK based online marketing communications as opposed to UK based ones?

As with the response to question 25, the fact that many digital companies which control online platforms available in the UK are not based in the UK could mean enforcement will be considerably more challenging.

27. Do you think these restrictions could disproportionately affect UK companies?

No comment.

Public sector equality duty

28. Do you think that a total restriction on HFSS advertising online is likely to have an impact on people on the basis of their age, sex, race, religion, sexual orientation, pregnancy and maternity, disability, gender reassignment and marriage/civil partnership?

No comment.

29. Do you think that any of the proposals in this consultation would help achieve any of the following aims?

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**
- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**
- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

No comment.

Socio-economic impact

30. Do you think that the proposals in this consultation could impact on people from more deprived backgrounds?

No comment.

Annex B: evidence note consultation questions

31. Do the calculations in the evidence note reflect a fair assessment of the transition costs that your organisation would face?

No comment.

32. Is the time allocated for businesses to understand the regulations a fair assessment?

No comment.

33. Are there any ongoing costs that your organisation would face that are not fairly reflected in the evidence note?

No comment.

34. Is the assessment on the number of online impressions a fair assessment?

No comment.

35. It is estimated that a significant proportion of HFSS advertising online will be displaced to other forms of media. Do you think the level of displacement is correct?

No comment.

36. It is assumed that the level of displacement to other forms of media would be the same under the options outlined in the evidence note. Would you agree with this approach?

No comment.

37. Do you have any evidence on how competition may vary between the options in the evidence note? This can be any form of competition, for example competition between HFSS brands or competition between other forms of advertising.

No comment.

38. Do you have any additional evidence or data that would inform:

- our understanding of children's exposure to online adverts?
- how different types of online advert (for example static display and video adverts) can have different effects on children's calorie consumption?
- the estimates for additional calorie consumption caused by HFSS product advertising online?
- the long-term impact of HFSS advertising exposure during childhood (for example on food behaviours and preferences later in life)?
- the health benefits of either option in the evidence note?
- how consumer spending habits will change as a result of these restrictions?
- how advertisers might adapt their marketing strategies in response to further restrictions in HFSS advertising?
- the impacts on the price of advertising slots, and how this might vary under both options?

No.