

## *SPUC submission on proposed changes to the BCAP Code in relation to abortion*

### **Background**

A number of pregnancy advice services were established in Britain in the wake of the 1967 Abortion Act so that abortion clinics could promote their services. Up till now these have not engaged in broadcast advertising, though they clearly wish to do so now.

### **SPUC's view**

SPUC objects to permitting abortion advertisements and to changing the code of practice so as to permit this. Our objection extends to permitting bodies such as “pregnancy advice” or “family planning” groups to advertise services which entail the endorsement or promotion of harmful and/or illegal practices, including abortion and actions and attitudes likely to lead to abortion. In this submission we focus on advertising which either directly or indirectly seeks to promote abortion or agencies providing or promoting abortion.

### **ASA/BCAP's approach**

The key issues are that the proposed changes would permit advertising of “post-conception pregnancy advice services”, and that such advertising must make it clear if “the service does not refer women directly for abortion”. According to BCAP, the proposed changes in the code of practice for broadcast advertising mean that abortion agencies would be able to advertise their services. It is likely, in our view, that the public will be exposed directly to television and radio advertising which promotes abortion services.

“BCAP's proposed rule on pregnancy advisory services would, in theory, allow abortion clinics to advertise,” said a BCAP spokesman.<sup>1</sup>

The spokesman went on to say that he did not think this would happen in practice because abortion is normally accessed via a GP or hospital. It seems the spokesman was aware that abortion is a medical procedure that is not legally available on request. It seems strange, therefore, that he was not aware of the rules against advertising medical procedures that require a doctor's referral.

### *ASA/BCAP's statutory/contractual duty*

ASA/BCAP have been contracted by Ofcom (the office of communications and broadcasting regulator) as the ‘complaints handling’ body for complaints about broadcast advertising. In 2008, Parliament passed new regulations stating that “[t]he promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.” (*Consumer Protection from Unfair Trading Regulations (CPUTR) 2008 SI 1277*, section 4). Whichever particular body is the “code owner” in this case (ASA, BCAP or Ofcom) we suggest that it does not behove the code reviewers to permit abortion providers (under the guise of “post-conception pregnancy advice services” or otherwise) to advertise, nor should the code impose prejudicial conditions on non-abortion providers.

Both of the proposals relating to abortion advertising (permitting it on broadcast media, and imposing a special requirement on non-abortion providers) amount to unfair commercial practices. Promoting abortion providers is exploitative of several vulnerable groups: expect-

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<sup>1</sup> Mark Sweeney, Anti-abortion group attacks plan to allow pregnancy advice ads, Guardian, 26<sup>th</sup> March 2009 See <http://www.guardian.co.uk/media/2009/mar/26/pregnancy-advice-advertising>

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tant mothers, women who are uncertain whether they are pregnant, unborn children and particularly unborn children with disabilities.

## *ASA/BCAP's general remit*

The Advertising Standards Authority/Broadcast Committee of Advertising Practice is not well-placed to conduct this enquiry. For this reason, we have not encouraged people to participate in the consultation on the review of the BCAP code. Rather we have suggested that people contact those with broader responsibility, such as Ofcom, to raise concerns.

We regard ASA as essentially an advertising industry body concerned to uphold standards of *advertising* with a fundamentally commercial approach. Our understanding is that ASA seeks to ensure that advertisers treat customers properly. This approach is not applicable to the doctor-patient relationship, hence the legal prohibition on commercial advertising of prescription medicines and medical procedures. Nor does a commercial approach to the advertising of abortion and related activities take account of the human rights issues, such as the right to life, the right to marry and found a family, and other rights that may be infringed. Television advertising of abortion services would infringe four of the five elements of Article 12, and contradict Article 14, of the EU Television Without Frontiers Directive (see appendix).

## **Law**

ASA seeks to operate within the law by prohibiting the advertising of unlawful activities in other contexts. Abortion remains in general against the law in the UK. Originally a common law offence, it was codified in the nineteenth century, finally being incorporated into the 1861 Offences Against the Person Act. The Abortion Act 1967 creates exceptions to this law, but outside the terms of the Act, abortion is a serious criminal offence.

Yet according to BCAP the proposed code would at least in theory permit abortion services to advertise. Our experience is that abortion providers will be eager to advertise for both commercial and ideological reasons, and this will lead to further exploitation of women, to deaths of unborn children, and to fragmentation and bitterness in vulnerable families and communities.

## *Legality of abortion*

Abortion also remains a criminal offence on the statute book, and is regulated differently in different parts of the UK, notably Northern Ireland, where the principle statute (the 1861 Offences Against the Person Act) remains the primary legislation. This law also applies in England, Wales and Scotland, although the Abortion Act 1967 creates exceptions where abortion is permitted. Advertising of illegal procedures is contrary to the public interest, advertising codes, and the law.

## *Unfair commercial practice*

Only those agencies with the financial resources would be able to advertise. Abortion providers can generate financial resources for advertising by charging more for abortions, whereas most pro-life advice services do not charge clients (or the NHS) for their services. Thus there will be a disproportionate opportunity for abortion providers to advance their cause. BPAS, the largest provider of abortion services in the UK, is strongly committed to abortion advocacy and believes abortion is an “essential part of healthcare” and “is necessary if women are to regulate their fertility”<sup>2</sup>.

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<sup>2</sup> See [http://www.bpas.org/bpn\\_asabout.php?page=54](http://www.bpas.org/bpn_asabout.php?page=54)

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Advertising has the power to be subtly constructed so as to direct vulnerable women to these agencies where abortion may be promoted as the “best option”.

## *Patients are not ordinary consumers*

Advertising is appropriate to help consumers make informed choices. However, patients are not consumers in the normal sense, and medical treatment is unlike other products and services. While abortion is not a typical medical procedure, one would expect the prohibitions on advertising drugs and treatments requiring prescription to apply. The 1989 European directive, and the revised CAP code for non-broadcast advertising, require such a ban. The [Consumer Protection from Unfair Trading Regulations 2008](#)<sup>3</sup> forbid the use of “undue influence” in commercial transactions including the exploitation of “any specific misfortune or circumstance “ which may impair the consumer’s judgement. Typically, because broadcast advertising is less “targeted” than print advertising, the broadcast code requires greater protection of vulnerable individuals from such exploitation than the non-broadcast code. The reversal here is deeply disturbing.

## **CAP/BCAP standards**

To permit advertising regarding abortion is contrary to CAP and BCAP stated values and goals. Foundational to the whole CAP and BCAP code is the principle that advertising should not be misleading, harmful or offensive. This basic value statement is repeated on numerous occasions throughout the consultation document.

## *Harm*

Abortion causes immense harm to many parties, most obviously by causing the death of the unborn child. The BCAP cannot ignore the harm to these children or rely on a legal fiction as the courts usually do to pretend that the child does not exist before birth. He or she is real and alive, and abortion kills the child. Moreover, there is mounting evidence that abortion harms women both physically and mentally. In March 2008 the Royal College of Psychiatrists issued new abortion guidelines. Whereas previous guidance said that there was no evidence of long-term distress after an early abortion, they now say that some studies indicate a range of mental disorders following abortion. Abortion can also cause grave distress to the father of the baby, the grandparents and other family members.

## *Offensiveness*

The ASA believes that advertisements should avoid giving offence. While this is can be a vague and subjective notion, often difficult to define or quantify, in the case of a specific action like providing or promoting abortion, it is clear that such advertisements by their nature would be objectively offensive to moral and religious principles. The BCAP consultation document refers only to the personal offence that abortion adverts might cause to people with private religious or moral views. The consultation document says:

“Family planning centres ...[have] the potential to cause serious offence to viewers and listeners, especially those with intimate moral or religious convictions, ...” (§11.37)

Undoubtedly such personal offence would arise, but those offended first and foremost by advertising abortion are the infant victims of abortion. To take an analogy, consider who would be principally offended by promotion of the apartheid practices in 1980s South Africa. Would it be right to consider the anti-apartheid white residents of SA as the people principally offended? No. Those actually targeted by the policy deserved to be considered the

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<sup>3</sup> [CPUTR 2008 SI 1277](#), states: “4. The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.”

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most offended. In the same way, those in society offended by abortion are principally the unborn. Abortion advertising is offensive to abortion's victims.

## *Health*

The TV Without Frontiers directive states, at Article 3e 1(c)(iii):

“Audiovisual commercial communications shall not encourage behaviour prejudicial to health or safety.”<sup>4</sup>

As noted above, abortion is intrinsically unsafe – encompassing the killing of the unborn – but it also carries significant health dangers for women. With the growing evidence that abortion is prejudicial to women's health, advertising of abortion services would be in contravention of this Article of the directive. References to medical studies and reviews showing the health problems associated with abortion are available from SPUC.

The advertising industry needs to adopt a precautionary approach to claims about medical procedures, especially as much published data in this area comes from individuals or bodies that have a personal or corporate bias in favour of providing abortion and/or for declaring abortion to be safe.

In addition, Article 3e 1(g) states:

“Audiovisual commercial communications shall not cause physical or moral detriment to minors.”

At the very least, the highly contentious nature of abortion and its deep moral significance would suggest that minors not be subject to its promotion via advertising, which would undoubtedly occur if this proposal were permitted.

## *Delay in obtaining abortion*

The BCAP consultation document states that the reason for requiring services to declare that they do not refer for abortion is to avoid delay for those women who opt for abortion. However, this presumes that a woman seeking advice regarding a pregnancy are considering abortion, that they legally qualify for abortion, and that they will choose one if offered. It also carries an implicit assumption that any delay whatsoever is harmful. Such an assumption is indicative of a mentality in which there is pressure to make a decision to abort, a mentality that could easily amount to coercion. In fact there is significant anecdotal evidence that women have been coerced into abortion by counsellors and health practitioners.<sup>5</sup> Furthermore, abortion-providers typically provide no support or information to assist women who are contemplating abortion solely for financial, social or relationship reasons to find help to address these problems and continue their pregnancy. This results in women having abortions who, with the assistance of pro-life agencies, could have avoided doing so. It also means that the law, which says there should be a medical justification for abortion is routinely flouted.

## **Implications of the proposals**

For most people, the idea of advertising abortion on TV and radio is disturbing.

- Destroying an unborn baby's life strikes at the deepest sense of moral values.
- Promoting abortion as a service indicates a disintegration of social ethics.
- Though abortion is practised for social rather than medical reasons, the advertising of all other 'prescription' procedures is banned.
- Seeking to increase or maximise the practice of abortion is morally repugnant.

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<sup>4</sup> M2 DIRECTIVE 89/552/EEC of the European Parliament and of the Council of 3 October 1989

<sup>5</sup> For example, see Melanie Symonds, *And Still They Weep*; SPUC Educational Research Trust, 1997; Melinda Tankard-Reist, *Giving Sorrow Words*, Duffy & Snellgrove, Sydney, 2000; and, Melinda Tankard-Reist, *Defiant Birth: Women who resist medical eugenics*, Spinifex, Melbourne, 2006.

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## ***What difference will the changes make?***

The wording of the rule makes it clear that agencies like Marie Stopes and the British Pregnancy Advisory Service (BPAS) would be able to advertise their services, which include abortion services. Both also strongly advocate in favour of abortion. It is likely that the public will be exposed directly to television and radio advertising which promotes abortion services.

## ***Attempting to normalise a disputed practice***

The proposals have impact beyond the commercial sphere. They seek the normalisation of abortion, a deeply controversial matter.

Advertising messages that focus on abortion services, or promote abortion as a neutral moral choice amongst others, imply that abortion is a normal practice. However, abortion is neither a medical procedure like any other, nor morally neutral. A survey by the medical journal *Pulse* revealed that 19% of General Practitioners believe abortion should be illegal, 24% refuse to sign abortion referral forms and 55% think the present 24-week limit for certain abortions should be reduced.<sup>6</sup>

The community is also ambivalent about abortion. When women were asked whether they thought access to abortion should be improved or more support should be given to women who wanted to keep their baby, only eight percent wanted easier abortion but 85% wanted more help for mothers to keep their baby.<sup>7</sup> Ambivalence about abortion is also common among women who are considering abortion.<sup>8</sup>

## ***The “disclosure” proposal***

The key issues are that the proposed changes would permit advertising of “post-conception pregnancy advice services”, and that such advertising must make it clear if “the service does not refer women directly for abortion”. (The rationale for the latter, is avoiding delay, which we deal with above. )

The changes mean that pregnancy advice services, including family planning centres, can advertise their services on television and radio, and if they do not refer women directly for abortion, they must say so. Family planning centres and pregnancy advice agencies which refer women for abortion but offer no alternatives, are not required to mention the limits of their services.

This offers an unjust advantage to pro-abortion agencies by implying that they advise on a variety of solutions to the difficulties faced by pregnant women. In our experience this is not normally the case, and nor is it ever the case that pro-abortion pregnancy advice services offer practical steps to assist expectant mothers. Pro-life agencies in contrast, offer help in dealing with a wide range of problems, both directly and through various statutory and non-statutory agencies, health providers, churches, etc.

There is no proposal to require pro-abortion pregnancy advice services to declare if they are unable or unwilling to discuss other possible courses of action for a pregnant woman.

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<sup>6</sup> See Nic Fleming, Almost a quarter of GPs ‘won’t refer abortions’, *Daily Telegraph*, 3 May 2007, <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/05/03/nbirth03.xml>

<sup>7</sup> Communicate Research women-only poll, May 2006, commissioned by Choose Life.

<sup>8</sup> Törnblom M *et al* (1999) Decision-making about unwanted pregnancy. *Acta Obstet Gynecol Scand* 78:636-641

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## *Inconsistency*

The proposals to allow broadcast abortion advertising would introduce an inconsistency between broadcast and print advertising: since the proposed rule for print advertising (following the CPUT Regulations noted above) is: “Prescription-only medicines or medical treatments may not be advertised to the public.”<sup>9</sup> As a general principle broadcast advertising, because less targeted to particular audiences, should keep within narrower limits than advertising in targeted publications.

## *Discrimination*

The requirement for agencies which do not refer for abortion to say so is discriminatory. The proposed rule requires advisory bodies that do not refer directly for abortion to make explicit statements in their advertising to that effect. It is clear that this rule is targeted directly at pro-life pregnancy advisory services. Even though such services are unlikely to have the financial means to purchase broadcast advertising, the fact that they are targeted in this way is discriminatory.

## *Are all choices morally equivalent?*

The idea behind the rule is based upon a false premise. That is, that abortion is one of a group of morally equivalent or even morally neutral alternatives, and that therefore there can be no justification for not promoting all equally. In fact, a pro-choice position is as much a position based upon an ethical perspective as is the pro-life position. To demand that just one type of ethically considered perspective must declare its position, yet another different one not be required to do so, is unsustainable. Agencies like BPAS and Marie Stopes are advocates for a particular view regarding abortion. Viewers and listeners will not be aware of that view in much the same way as they might not be aware that an agency is a pro-life one.

## *Limiting opportunities for choice*

This issue is related to another of ethical significance. Large organizations like Marie Stopes and BPAS have considerable financial resources at their disposal that enable them to advertise, and potentially advertise in such a way that others will effectively be squeezed out, thereby producing a situation where women will not be given the opportunity to properly assess all alternatives in a way that gives proper weight to the significance of their choices. It is also of ethical significance that some abortion providers have an unstated conflict of interest because they gain financially from the provision of abortion. If this proposal goes ahead the requirement regarding non-referral for abortion should be replaced with a requirement for agencies to declare a conflict of interest.

## **The origin of the proposals**

In 2007/8 the pro-abortion lobby and abortion providers like BPAS and Marie Stopes, promoted an effort in parliament to change the law to “protect” pregnant women from pregnancy advice services that do not provide abortion. The pro-abortion groups appear to be worried that they are “losing customers” to pro-life agencies. However, the law was not changed.

The pro-abortion lobby now wants the ASA’s Broadcast Committee of Advertising Practice to change the code of practice both to allow abortion providers to advertise on TV and radio

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<sup>9</sup> *The CAP Code Review: Consultation on the proposed CAP Code* CAP non-broadcast, March 09, Annex 1 section 12, p145, §12.12 (Note the evident mis-numbering: the cited quote is the first paragraph numbered “12.12”)

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and to impose on anti-abortion groups a restriction similar to (but more radical than) the unsuccessful parliamentary amendment. (See Appendix 2, at 11.42.)

We feel it was disingenuous of BCAP to cite unsuccessful statutory amendments as if to give backing to these more radical proposals. The statutory amendments as tabled in Parliament stopped far short of the more pro-abortion proposals adopted by the Science and Technology committee.

## Conclusion

Abortion should not be treated in such a way as to reduce its ethical significance, which would surely be the case if it became the object of television and radio advertisements. Advertising should also not be regulated in such a way as to deliberately discriminate against one well-respected and carefully developed perspective.

The strongly predominant wish in the community is for the numbers of abortions to decrease, not increase. However, advertising of abortion services would promote abortion, increase its incidence and thereby increase harm to all involved.

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## Appendix

### Television without frontiers directive

(1989L0552 — EN — 30.07.1997)

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#### Article 12

Television advertising and teleshopping shall not:

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or to safety;
- (e) encourage behaviour prejudicial to the protection of the environment.

#### Article 13

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#### Article 14

1. Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited.

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