



From: [Redacted]

Sent: 23 August 2021 17:31

To: [Redacted]

[Redacted]

Subject: [External] CAP and BCAP consultation on rules on harm and protected characteristics - for the attention of [Redacted]

Dear [Redacted]

Thank you for contacting Premier and for giving us the opportunity to contribute.

We have set out our provisional thoughts below, but would appreciate the opportunity to discuss this in further detail.

- 1) The wording that is proposed is not clear, in particular "likely to cause harm".

A lack of clarity means broadcasters and advertisers will not know what is permissible and what needs to be done in order to stay within the rules.

For example:

- What does "harm" require – what is the threshold?
- How is harm different from offence or distress?
- Will it be assessed subjectively or objectively?
- Who will assess it?
- How will they assess it?
- Is it a question of content and/or delivery?
- What is meant by "likely", eg does this mean more likely than not?
- Does "likely to cause harm" take into account the context, eg would a Christian advert on a Christian radio station targeting a Christian audience be considered in context, or is the advert considered in a vacuum?
- Is it purely a question of looking at the "harm" or is there some balancing of this against a benefit? For example, an advert encouraging someone to have a Covid vaccination may be deemed to have a public benefit, but having the vaccination may cause very real physical harm to some individuals. Would this be permitted? If there is a balancing act between perceptions of benefit and harm, how is this achieved?
- Where an advert mocks or denigrates Christian or other religious beliefs to sell a product, might that be considered "harm"?
- Where an advert publicises a healing event, which someone attends expecting healing which does not happen, might that be considered "harm"?
- Where an advert promotes an organisation or event to support Christians to be celibate rather than enter into same sex sexual relationships, might that be considered "harm"?

There is a risk that the proposed rules, as drafted, will impede lawful freedom of expression and have a chilling effect that runs counter to a truly pluralistic society. Without clarity, there is a risk of a chilling effect,

in particular for religious broadcasters and advertisers who may be concerned about being targeted by those who are hostile to their religious beliefs.

2) The need for protection for religious and other philosophical beliefs

It will be important to ensure that the definition of harm prevents it from being used as a tool by those who might want to silence those with ideological differences, and to prevent to being exploited by those who are hostile to religious beliefs.

In conjunction with this, it is not clear what protections will be in place for those (such as religious advertisers) who play a crucial part in a truly pluralistic society, but whose beliefs may be contentious. For example gender-critical beliefs, where there is a risk of those on both sides of the debate seeking to silence the other.

The courts have developed tests, and we are concerned about these rules being parallel tests to those in, eg the Equality Act, but developed without similar jurisprudence or protections. For example, there are protections where a belief is worthy of respect in a democratic society (such as traditional Christian beliefs on salvation, sin, marriage, sexual conduct, sexual identity – matters where there may be a variety of beliefs, but confirmed by judges as worthy of respect). It is of vital importance that where an advert addresses such beliefs or matters touching upon such beliefs, and does so temperately, an advertiser can be 100% confident that no credence will be given to any complaint of harm. If indeed that is the case, it should be stated explicitly. If that is not the case, it should be explained why that is.

In saying this, we trust that CAP and BCAP's commitment to the Public Sector Equality Duty, means that they appreciate the particular need to stand up for religious beliefs, and that they will therefore not be seeking to lower the bar for the existing protections for religious beliefs, but rather will be seeking the very strongest protections for those expressing their religious beliefs.

3) Guidance

The above suggests to us the need for guidance to accompany the rules. Will there be any accompanying guidance? If so, there should be consultation on this.

Next steps

As stated at the outset, we would welcome the opportunity to have further input. We believe we may be able to add a distinct perspective (as a religious broadcaster), in particular on how the aims of the proposed rules can be met in a way that does not marginalise religious broadcasters and advertisers, and bring a perspective that may be considered particularly important, bearing in mind the stated commitment to the Public Sector Equality Duty.

Yours Sincerely,

