

19 July 2021

CAP and BCAP consultation: harm and protected characteristics

- NSS response

Submitted by email to: harm@cap.org.uk

Question: Do you agree or disagree with CAP and BCAP's proposed rules? Please provide your rationale for agreeing or disagreeing.

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit, non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state, and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture. We promote free speech as a positive value.
2. We welcome this opportunity to respond CAP and BCAP's consultation on harm and protected characteristics. We share CAP and BCAP's principles that it is important to promote and uphold equality, and ensure everyone in society, especially the most vulnerable, is adequately protected.
3. However, we are concerned that, without greater clarification, the additions to the CAP and BCAP codes may inadvertently have a detrimental effect on the public – including on the basis of their protected characteristics. Without further detail, the additions may lead to increased censorship of marketing and advertising where there are fears of causing offence to religious people. This censorship may fuel degrading social stereotypes about certain people, particularly women and LGBT+ people.
4. The proposed addition to the CAP and BCAP codes is centred on the notion that marketing communications and advertisements must not contain anything “likely to cause harm” on the basis of protected characteristics, including religion. According to the consultation document, CAP and BCAP consider “...that ‘harm’ is a commonly understood term”.

5. However, for the purposes of the codes, we do not think “harm” has been clearly defined, and therefore it cannot be relied upon as a “commonly understood term”, i.e. one which every person will define reasonably consistently. The consultation document has not provided examples of what kind of content is not currently covered by the current code, but would be covered by these new rules. Without a clear idea of this, the NSS cannot support such a change. Increasing censorship of marketing and advertising without a clear justification can in fact be more harmful – including to those with protected characteristics. An additional duty to not include anything “likely to cause harm” when “harm” has not been clearly defined, particularly when protected characteristics such as religion are engaged, could result in over-censorship.
6. “Harm” can sometimes be used synonymously with “offence”, another subjective term. For example, a deeply religious person may feel they are ‘harmed’ by something they witness that offends their religious beliefs because of the emotional distress it may cause. This could include depictions of people representing another protected characteristic.
7. For example, it could result in the censorship of depictions of same-sex relationships because this offends religious people who believe such relationships go against their beliefs. There is a precedent for this – in 2010 the ASA banned an ice cream advert showing two priests who appeared to be on the verge of kissing. The advert could be viewed as progressive by those campaigning for greater LGBT+ equality. Censoring such adverts harm gay people by fuelling homophobic social narratives that there is something inherently offensive, shameful and immoral about being gay. It is particularly harmful to gay members of religious communities, who are often especially vulnerable to hostility, prejudice and intolerance within their communities.
8. It is ironic that the consultation makes multiple references to the ASA system’s gender stereotyping work, while at the same time CAP’s guidance on ‘religious offence’ contains passages that pander to religious ideas that women must be censored. The ‘religious offence’ guidance says marketers “should be mindful of how they portray sex, nudity and women if marketing communications, especially posters, are likely to be seen by people with strong religious belief.”
9. Singling out of women in connection to “sex and nudity”, and suggesting that pictures of women should be censored to avoid causing offence to religious people, is itself harmful to women on the basis of their protected characteristic of sex. This guidance helps to enable religious subjugation of women, and feeds misogynistic attitudes that women are inherently sexualised beings that must be covered up – a key aspect of ‘rape culture’.
10. In addition to the ‘gay priests’ advert referenced above, ASA banned a second advert by the same ice cream company showing a pregnant nun eating ice cream. Again, censoring such an advert may have a negative impact on people on the basis of protected characteristics – namely pregnancy and maternity, in addition to sex. Banning the advert because it featured a pregnant nun reinforces social stigmas about pregnancy outside of marriage.
11. Banning these adverts, rather than protecting people, simply serves to uphold the Catholic Church’s restrictive and regressive views on sex and sexuality.

12. We also question the necessity of these proposed rules when the CAP and BCAP codes already provide a high level of protection. Indeed, everything in the codes is designed to prevent harm, including “serious or widespread offence”. The addition of these rules could mean material no longer needs to cause offence that is “serious or widespread” in order to be censored. If individuals or organisations representing minority religious groups can argue it offends them specifically on the grounds of their protected characteristic of religion, this could result in significantly increasing marketing and advertising content that must be censored. It is already the case that ASA has banned very tame advertisements because they featured religious themes, including the ice cream adverts mentioned above.
13. The Equality Act exists to protect individuals from harassment, discrimination and victimisation, not to protect ideas or the interests of religious institutions. As we have highlighted in this response, censoring adverts to appease religious interest can have the knock-on effect of harming people with other protected characteristics. It is also corrosive to free speech, and in effect partly brings back the ‘blasphemy laws’ which were abolished in 2008.
14. We therefore recommend that CAP and BCAP re-consider the necessity of these additional rules, in light of the high level of protection already afforded by the codes, and in light of the fact that over-censorship can harm the very people CAP and BCAP seek to protect. We also encourage CAP and BCAP to provide greater clarity, aided by examples, as to what constitutes ‘causing harm’ in this context, and to make explicit reference in the guidance of the need to protect free speech and to avoid the harm that over-censorship of marketing and advertising materials can cause to people on the basis of their protected characteristics.

Consultation response prepared by [REDACTED]

[REDACTED]
National Secular Society

For more information please contact: [REDACTED]