

Regulatory statement: harm and protected characteristics

Committee of Advertising Practice and Broadcast Committee of Advertising Practice statement on the outcome of their consultation on proposed rules on harm and protected characteristics



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Summary

Following a public consultation, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have decided not to introduce new rules relating to harm and protected characteristics into the broadcast and non-broadcast Codes.

Having carefully reviewed the responses to the consultation and held discussions with Ofcom (in respect of the proposed BCAP rule), CAP and BCAP concluded that the Codes' existing rules on social responsibility, coupled with more specific provisions on harm across both Codes, are adequate in protecting against or reducing the likelihood of harm arising from advertising and other marketing communications. In CAP and BCAP's setting of the rules and the ASA's administration of them, the parties will continue to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in line with the public sector equality duty (PSED).

The Codes contain many specific rules relating to various types of harm, including harm to those sharing protected characteristics, as well as 'Principles' at the head of Code sections stating that ads must not cause harm.

CAP and BCAP will continue to introduce specific, detailed guidance on preventing harm to particular groups sharing one or more of the protected characteristics in response to robust evidence of real-world harm to those groups being caused by advertising. CAP and BCAP will also keep under review whether such evidence suggests further rules, addressing specific harms, need to be introduced to the Codes.

Background

In 2021, CAP and BCAP published a public consultation on introducing new rules relating to harm and the protected characteristics defined in the Equality Act 2010 (the Act).

A number of factors fed into CAP and BCAP's decision to consult. For example, CAP and BCAP consider themselves subject to the public sector equality duty (PSED) set out in the Act. As a result, CAP and BCAP seek to ensure that the protections their Codes provide to those sharing protected characteristics are up to date and appropriately comprehensive. PSED imposes a duty on persons carrying out public functions to have due regard when carrying out their regulatory functions to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic and people who do not.

The ASA's work on the impact of gender, racial and ethnic stereotypes in ads provided CAP and BCAP with a further opportunity to consider the protections that they provide to those sharing protected characteristics. Specifically, the Committees considered whether the Codes could better facilitate the regulatory system to respond more quickly and more

flexibly to prevent different types of harm, including to those sharing protected characteristics. Subsequently, in June 2021, CAP and BCAP invited stakeholders, via public consultation, to provide views on the potential inclusion of new, overarching rules, seeking to prevent advertisements and other marketing communications from including anything that is likely to cause harm, with particular regard to protecting vulnerable groups of people sharing the same characteristics.

Please see the [consultation document](#) for further details.

Responses

The consultation received six responses, five from organisations and one from a member of the public.

The respondents raised a number of points, the most prominent of which were:

- lack of clarity over how harm would be defined;
- whether there was sufficient evidence of need for a harm rule given existing protections; and
- related concerns that the proposed rules could impose unjustified limits on freedom of expression.

Decision

Following review of the responses to the consultation and discussions with Ofcom (in respect of the proposed BCAP rule), CAP and BCAP have decided not to adopt the proposed rules.

The Codes contain many specific rules relating to various types of harm, including harm or offence to those sharing protected characteristics¹, as well as 'Principles' at the head of Code sections stating that ads must not cause harm. The principle that ads should not be likely to cause harm, both generally and specifically to those sharing protected characteristics, is central to CAP and BCAP's and the ASA's work. CAP and BCAP commit to equality and diversity through the ASA's diversity and inclusion strategy and act in accordance with the public sector equality duty (PSED). As a result, CAP, BCAP and the ASA have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in the exercise of their

¹ See the [CAP](#) and [BCAP](#) sections on harm and offence, including specifically rules on photosensitive epilepsy (CAP 4.7, BCAP 4.6) and gender stereotypes (CAP 4.9, BCAP 4.14), which in different ways seek to offer protection on the basis of a shared characteristic; the rules on offence (CAP 4.1, BCAP 4.2) explicitly list characteristics protected under law.

Other Code rules deal with specific forms of harm relating to, for example: finance; gambling; alcohol; children; and the environment. These rules refer to a range of harms and to different groups of people who might be harmed.

regulatory functions, including in their application of rules on offence, social responsibility and discrimination.

CAP and BCAP have also published [guidance](#) on how the system protects vulnerable people. The guidance recognises that vulnerability can arise for a variety of different reasons, including but certainly not limited to the sharing of a protected characteristic.

In reaching their decision, CAP and BCAP have also taken account of the concerns raised by stakeholders and the Committees' commitment to introduce new rules or guidance about particular types of harm, where the evidence and public consultation suggest it is necessary to do so.


In conclusion, CAP and BCAP have decided not to adopt the proposed rules.

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