

CAP and BCAP consultation on rules on harm and protected characteristics

Introduction

I write on behalf of the Christian Medical Fellowship (CMF), an association of about 5,000 UK doctors, medical students, and nurses. We welcome the opportunity to respond briefly to this consultation and appreciate the clear and comprehensive notes that accompany it.

The proposals would alter the CAP and BCAP Codes to require marketing communications and advertisements to comply with a 'no-harm' rule, with particular regard to vulnerable people and those covered by the nine categories of the 2010 Equality Act. Under the proposed rules, the ASA must meet its obligations under the public sector equality duty.

The issue turns on the interpretation of the word 'harm'. CAP and BCAP consider that 'harm' is a commonly understood term (Section 4.2, p 12). Our contention is that 'harm' is a highly subjective notion that requires an agreed evidence base to be a useful one.

In many settings, harm is equated with offense. Offense has been weaponised. The claim to be offended by the opinion of another, whether spoken or written, is used to 'cancel' that opinion - to silence it or, at the very least, to hold it up to ridicule. In this situation, offense is not an index of harm done to the one claiming to be offended; instead, it has become a weapon with which to damage the credibility of another.

In many settings, offense is not harm – it is a choice, something taken not given. One is free not to take offense. Granted, if a person takes offense, they may be 'harmed' in the sense that they may experience negative emotions such as rejection, anger, resentment, and the like. But it is the choice to take offense, and not the opinion at which the offense is taken, that is the cause of the 'harm' to the offended person.

Advertising and broadcasting that undermine widely-perceived and evidence-affirmed societal 'goods' harm that society. For example, promoting foods and drinks that have been proven to contribute to the epidemic of childhood obesity in our country is clearly harmful to those children who watch the ads. Steps have been taken¹ to limit the exposure of children under 16 to the advertising of food and drink products that are high in fat, salt and sugar, in line with that evidence. The recent proliferation of TV ads for (so-called) responsible betting may, over time, be shown similarly to have contributed to rising levels of problem gambling. If reliable evidence for this is forthcoming, there will be clear public health implications for advertising and broadcasting.

CMF welcomes the steps being taken to update CAP and BCAP Codes to protect vulnerable people and those covered by the nine characteristics of the 2010 Equality Act (EA). Advertising and broadcasting exert significant influence on public attitudes and dispositions. Where such influences are more subtle, confirming evidence is less easy to gather than in the examples above. Unhelpful or harmful stereotypes can be reinforced, prejudice consolidated, anarchy encouraged, conscientiously held beliefs ridiculed, and so on. Broadcasters are required² to be even-handed, but frequently

¹ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2006/new-restrictions-on-the-television-advertising-of-food-and-drink-products-to-children> (visited 06.07.21)

² <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code> (visited 30.06.21)

adopt (conscious or unconscious) bias that reflects 'agendas' of the day. This bias may be 'visible' in the posture taken by interviewers or in the story lines of popular 'soaps.'

Take 'gender' as an example of a subject that reflects the power of broadcasting to contribute to much needed social change on the one hand, but to a questionable ideology on the other. In the last 50 years, advertisers and broadcasters both reflected and contributed to the erosion of narrow gender-expression stereotypes and the overly patriarchal values that supported them. There was ample evidence of harm suffered by women of the time. That the opportunity to vote, to participate in higher education, to compete for top jobs, etc was largely limited to men came to be seen by society in general as unjust, discriminatory, and certainly at odds with the spirit later embodied in the EA. The result was a victory for equality of the sexes, and the freedom to express that equality with diversity.

However, more recently gender has been dislocated from sex, and re-defined as fluid, self-declared and non-binary - an ideology without an evidence base in science. Despite this, it has been adopted increasingly by educators, healthcare providers and the police, and reflected in broadcasting. The ideology calls for a strongly affirming attitude to children who feel they may have been born in the wrong body, including the use of puberty blocking drugs and cross-sex hormones. But such evidence as there is suggests a more cautious, watch and wait approach is needed, as most gender-confused children will go on to identify with their birth gender, naturally, during puberty. Ideologues accuse opponents of transphobia, and of causing harm to trans children. But evidence (for example, the increasing number of trans young people seeking help to de-transition) is growing that suggests it is the affirmative approach that is truly harmful.

Our point is this: the concept of 'harm' must be based on robust evidence, not ideological fashion. Genuine reform of the CAP and BCAP Codes will be expressed not by deferring to flawed ideologies (no matter how loudly they are trumpeted), but by being guided by the evidence (even if it risks offending activists).

