

# Consultation on public sector equality duty: BCAP's evaluation of responses



## 1. Introduction

**Following public consultation, the Broadcast Committee of Advertising Practice (BCAP) has decided to make changes to its rules on offence (4.2) and the scheduling of advertising for sanitary protection products (32.6.1).**

BCAP has published a separate regulatory statement setting out the rationale for its decision. This document provides detailed responses to specific comments received during the consultation. This document should be read alongside the consultation document.

## 2. List of respondents and their abbreviations used in this document

	Organisation	Abbreviation
1	Humanists UK	HUK
2	National Secular Society	NSS

### 3. Section 4: BCAP's proposals for change

#### Rule 4.1: offence

Respondent/s	Comments	CAP's evaluation:
HUK	<p>Sets out detailed arguments concerning the compatibility of the current formation of rule 4.2 with the UK's obligations in relation to freedom of expression under the European Convention on Human Rights (ECHR).</p> <p>Argues that 'belief' should not be included as a 'protected ground', as it is unclear which beliefs would be covered and may lead to unintended consequences such as ads expressing opposing views to the beliefs would be banned.</p> <p>Rather than addressing the inequality between religious and non-religious beliefs by imposing censorious rules on all groups, the Codes should be amended to offer the same freedom to express negative views about others' belief systems. Religious groups should be able to express their disagreement or mockery of non-religious groups and vice-versa. Such freedom of expression is necessary for the preservation of both the right to freedom of expression and freedom of religion or belief in a democratic society.</p>	<p>These matters fall outside the scope of BCAP's consultation, which concerns a narrow proposal to add certain characteristics to the list of those about which advertisers should take particular care to avoid causing offence, as opposed to the wider question of the compatibility of the regulation of offence with Article 10 of the ECHR. In order to ensure fairness to all respondents and deal with the aims and objectives of the consultation efficiently, BCAP can only consider points that relate to the consultation proposals. However, BCAP remains open to considering these important questions through its wider work.</p> <p>The characteristics listed in rule 4.2 are not 'protected grounds'. However, their treatment in advertising has resulted in the ASA upholding complaints under rule 4.2, and, consequently, they are included in the list to ensure that advertisers are alerted to this and the public are protected from offensive advertising. In practice, the ASA will uphold complaints about ads under rule 4.2 if they are likely to cause serious or widespread offence regardless of whether the ads include references to the characteristics listed in the rule. Similarly, the fact that an ad refers to or portrays characteristics listed in the rule will not of itself constitute grounds for an upheld complaint: the referral or portrayal must be likely to cause serious or widespread offence. The offence rule is concerned with the manner in</p>

		<p>which views are expressed and does not automatically prevent negative or dissenting views about others' beliefs; the rule is only breached where such views are expressed in a manner likely to cause serious or widespread offence.</p>
NSS	<p>Important that religious beliefs and worldviews are not treated with greater deference than non-religious ones. We therefore suggest that the wording of the code reflect this.</p> <p>Concerned that the protections for religion and belief go further than is necessary for the ASA to comply with its obligations under the Equality Act. The wording is unduly concerned with not causing offence, which is a subjective emotional response. The guidance also presumes that the public will be harmed if they see an offensive advertisement. Given the low threshold for offence that the ASA applies, that seems questionable. In the past, some very tame advertisements have been banned because they featured religious themes. This suggests that merely portraying commonplace religious imagery or language in an irreverent manner is all it takes to be considered offensive. The Equality Act exists to protect individuals from harassment, discrimination and victimisation not to protect ideas or the interests of religious institutions. We therefore recommend that the rules focus on prohibiting content likely to promote discrimination and harassment rather than relying on the vague concept of offence.</p>	<p>BCAP considers that the concept of "belief" is sufficiently wide to ensure that non-religious beliefs are included.</p> <p>Under the public sector equality duty, BCAP and the ASA must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act, and the exhaustive listing of the protected characteristics in the offence rule will contribute to this. However, the rules on offence go beyond the law and BCAP includes them in order to prevent the public from being offended, particularly in relation to matters about which there are public sensitivities, as opposed to being legally obliged to do so. BCAP disagrees that the threshold of serious or widespread offence is low, and is unable to comment on unspecified advertisements which have been 'banned'.</p>

**Rule 32.6.1: scheduling of advertising for sanitary protection products**

No responses dealt with this proposal.