

## Consultation response form

<b>Consultation title</b>	Ofcom Diversity and Inclusion Programme 2018-2022
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**Response to Ofcom Consultation titled: Ofcom Diversity and Inclusion Programme 2018-2022, Published on 23 January 2018.**

I welcome the opportunity to contribute to the discussion of diversity and inclusion at Ofcom and look forward to reading the contributions of others in order that all might gain a wider perspective and greater understanding of the issues involved.

### **Is there a problem at Ofcom and what is its scale?**

Ofcom is already a highly diverse organisation as shown in its annual diversity reports that have been published in recent years. No evidence is presented in the consultation that suggests there is a significant problem with diversity and inclusion or that equal opportunities are not being afforded to individuals from certain groups.

Impartial evidence to support the case for positive discrimination/action is hard to obtain. Independent studies appear to be at best inconclusive on whether having a balanced workforce leads to improvements in the outcomes for organisations. There are too many variables to accurately assess whether outcomes are causal, universally positive or even whether the benefits outweigh the disadvantages. However, it is worth noting that there is no shortage of consultants ready to leap on the “diversity bandwagon” and provide their paymasters with “facts” to support their respective cases.

### **What is the impact**

If the evidence did point towards a problem within the organisation (which it does not) or that change would produce measurable benefits (for which the evidence is lacking), then it would be good practice to consider the seriousness of the consequences and whether measures such as diversity targets were required. This helps to provide perspective to the discussion in a wider context. So for example, will there be any loss of life or major environment impact? Will people experience unacceptable social hardship or a significant decline in their physical or mental health etc.?

From an examination of the facts, it is not immediately apparent that there is a “problem” and even if there was a problem it is so minor in nature that it would be unlikely to warrant any positive action as over time, any imbalances will be self-correcting. One potential impact, if any at all, appears to be that a few individuals who believe that they are capable of being senior executives may not achieve their ambitions. There are other options open to such

individuals including of course to pursue their career aspirations elsewhere. A further impact might be that due to implied deficiencies of individuals at Ofcom, who apparently are incapable of making unbiased judgements because they do not belong to a certain group, may inadvertently make incorrect decisions. Due to the natural fallibility of all human beings this would appear to be a risk that no amount of positive action/discrimination will address.

With so many other more significant matters to deal with and a problem which at worst should be considered as “minor”, one might question whether the effort being devoted to this matter by Ofcom, as set out in the consultation, is really the best use of its time and limited resources.

Ofcom exists to protect and enhance the lives of the 65 million citizens of the UK. It does not exist as a puppet to be manipulated by the media, the government or by groups with vested interests in promoting their own agendas.

### **Some wider perspectives to consider**

As an emergency measure of last resort and when the end it serves is significant enough, positive discrimination/action (which is likely to result in negative discrimination) may be temporarily justified. At all other times it is not appropriate to assign worth or rights based on anything other than the abilities or skills that the individual brings to the position for which they are being considered.

Implementing a policy of positive discrimination/action suggests that those who stand to benefit from such policies are somehow inferior. Making such policy choices infers that certain groups of individuals need more assistance than others, as they are not good enough to progress on their own merit. This does not appear to me to be true and I think individuals within those groups that stand to benefit from positive discrimination/action would rightly find this offensive. To be successful in an application for a position because an individual “ticked the right diversity box” does not form a sound basis for a recruitment or progression policy. To cast doubt in the minds of individuals that they were being judged by different standards and had not earned their position is disingenuous and potentially damaging to the confidence of the individual concerned.

Bringing factors over which individuals have no control (gender, colour, age etc), into the decision making process is not right in the majority of circumstances. The only thing that is justified is in recruiting or promoting the most appropriately qualified/skilled person and ensuring there are no artificial barriers to their success due to factors beyond their control.

It appears that Ofcom is attempting to walk the very fine line between positive action and positive discrimination and is drifting to the wrong side of that line in setting targets for the make-up of its workforce. It might be considered that removing the barriers faced by a less privileged group and aiming to provide them with equal opportunities with their peers is positive action but selecting or rejecting an applicant purely on the basis of factors outside of their control such a gender, race or age is discriminatory. If an organisation considers that it should focus on a particular group to give them encouragement it is already treading on moral thin ice. However, to go any further is to fall through the ice and is not appropriate for an impartial regulatory body.

It seems difficult to reconcile the claim that Ofcom makes judgements on matters that fall within its jurisdiction “without fear or favour” and then to choose to adopt a policy of setting targets in recruitment and promotion.

If I might be permitted to digress for one moment onto a wider issue. Discrimination is illegal and dressing it up as "action" is pernicious. We are not going to make progress by emphasising differences between “groups” or trotting out headline statistics about how many FTSE 100 companies have female directors.

Whilst it is regrettable that there are so few female directors it should not automatically be assumed that discrimination is the primary reason. Most directors are drawn from the older age groups and it takes a lifetime for change to work through the system. 25 years ago organisations had a predominantly male management structure. Women who have enjoyed increasingly equal opportunities will rise to the top but a new female graduate 25 years ago would only be in their mid-40's today and in most firms that is still young to be a director.

### **Why the grouping of individuals is unsound**

The stereotyping of individuals and placing them in groups for the convenience of data analysts does not stand up to scrutiny. All individuals should be valued and nurtured as people, and barriers to achieving the life goals they have chosen removed as far as practically possible. The key word here is “chosen”. Individuals make their own choices based on what they consider important to them and those with whom they share their lives, and their personal circumstances. What is important to one individual may be of much less importance to another.

The implicit assumption made by some senior executives appears to be that “everyone must want to be like me because I'm successful and why wouldn't they want to be successful too”. However, success is not measured just in terms of position, status and income. Many individuals recognise that life is much more than such things. Happiness, contentment, family, helping/caring for others, strongly held beliefs, contributing to a better society are more important to them. I doubt that few people on their death-bed have uttered the words “I wish I'd spent more time at work”.

One group should not benefit at the expense of another, rather all individuals should be brought onto an equal playing field. Positive discrimination, by its very nature creates winners and losers and this does not strike me as a good basis for any organisation to move forward. If I have a daughter and a son, would I not want them to be treated fairly and equally? People should be accepted and judged as individuals not lumped into boxes of flawed stereotypes, the latter of which is the approach that Ofcom appears to be readily embracing.

So called “disadvantaged groups”, do not need condescending approaches as individuals from these groups are good enough to gain positions and to progress on their own merits. Perhaps one of the real issues is that of workplace culture and practical work issues that prevail in large organisations. A reassessment of working practices to provide a more appropriate work/life balance may avoid the need for positive discrimination such as target setting. The promotion of a working culture that equates the value of an employee with long hours and

total dedication to the office means that some individuals are not prepared to sacrifice other priorities. Some individuals within these wider groups, do not want those high-flying jobs, and if they do, they organise their lives accordingly.

So often it appears that the default position adopted in discussions on diversity seems to be to deny that there are differences between genders, races etc. We should acknowledge that there are genuine differences between individuals and assuming or treating individuals within a group as “all the same” is clearly inappropriate and disrespectful to those who do not meet the implied group “norms”. It seems to me that we should rather celebrate the differences and recognise the strengths of the individual.

### **Wider perspective on workforce make up**

Media discussion of diversity often focusses on the lack of representation of certain groups within certain employment sectors. However, there are sectors such as local government, the civil service, the NHS, teaching and the arts where the balance of the workforce means that different groups are significantly under represented. Proponents of positive discrimination/action seem to conveniently forget that diversity is not universally in a single direction.

### **Is there a case for setting diversity targets?**

Can positive discrimination be justified in order to correct discrimination that has happened in the past? It could be argued that from a practical perspective there may be some justification for this to be the case. However, it seems to me that morally it is more difficult to justify. Discriminating for one group over another based on “the sins of the fathers” (or mothers!) seems unjust and an unhelpful action that is likely to be viewed as, at best, dubious by the individuals negatively affected and at worst with outright hostility.

Whilst we must accept that the past can and does influence the present, the unfairness of the past, however morally reprehensible, is in the past. Lawyers can argue over compensation but to correct discrimination by discriminating seems at odds with natural justice. Because one group formerly discriminated against another group does not give the right for the previously aggrieved group to “get even” or “teach them a lesson”.

An enlightened society or organisation should be beyond “an eye for an eye” and learn from its mistakes, not repeat them. It should also be remembered that it is not those that benefitted from the culture of discrimination in the past that will pay the price - it will be those starting off today or seeking to progress within an organisation who will become the victims of positive action/discrimination.

Clearly it is inappropriate to let discrimination continue against any group. What we should aim for is an equal playing field by eliminating discrimination altogether. If an organisation is going to favour one group it will by default have to deny the same opportunities to others.

It could be argued that positive discrimination is not implying that one group “cannot do it on their own merit” but rather, it is recognising the fact that certain individuals may be at a disadvantage. It provides these individuals with an equal opportunity to improve their

circumstances based on merit, without the obstacle of an unjustified assumption that individuals belonging to a certain group are not suitable to higher level positions or that they do not have as much ability as individuals in other groups. However, it could also be argued that discrimination is discrimination, whatever word you put in front of it!

The laws on discrimination which started to be put in place as far back as 1975, were meant to safeguard all individuals from discrimination and not to be used as a weapon of social engineering.

### **Are there instances where positive discrimination is right?**

Clearly there are practical instances where being able to specify gender may be preferable, for example, in medical matters a person may prefer to see a male/female doctor. However, if I am seeking an individual to repair a burst pipe, it is likely to be someone with the skills to fix it (logically a plumber) and whether they are male or female is largely irrelevant. I may find it more difficult to locate a female plumber but the gender of the aforementioned tradesperson is likely to be a second order consideration when my basement is filling up with water.

Likewise, in life and death situations such as medical emergencies, the gender of the health professional who can give assistance is likely to be of lesser concern to a seriously injured patient than whether or not the health professional has the skills (and therefore in a good position) to save a persons life.

The breadth and varied nature of the activities carried out by Ofcom indicate that the setting of overall diversity targets is inappropriate. As with the examples provided in the previous paragraph, matters of diversity are largely second order (or indeed 4<sup>th</sup> order) issues. That said, it is possible that a stronger case can be made for the balance of employees working on subjective matters such as those of taste and decency to broadly reflect society as a whole (although it should be noted that the wisdom of the masses is not necessarily correct). In contrast, diversity targets in relation to the activities of Ofcoms operational spectrum engineering teams would appear largely irrelevant for reasons previously highlighted.

### **Conclusion**

So where does the discourse above leave us?

If after careful and reasoned consideration of all of the issues Ofcom considers that it remains appropriate to retain diversity targets, it should abandon absolute targets and instead permit itself some flexibility by setting a desirable range of ratios i.e. between x% and x%, towards which it might aim. In doing so, it is far less likely to find itself in breach of the law or to alienate its employees who all deserve to be treated equally, with respect and as valued individuals.