

Question 3: Are there any additional objectives that you feel Ofcom should include in its Diversity and Inclusion Programme?

RT is strongly committed to diversity and inclusion. It employs over 2,000 staff worldwide including citizens or nationals of more than 40 countries. It has built a diverse and inclusive workforce to engage with the countries and cultures on which it reports and in which its channels are viewed. It therefore welcomes Ofcom's diversity and inclusion programme for its role as communications regulator for the UK.

Unlike Ofcom, however, RT operates in many jurisdictions around the world and must comply with the laws of those jurisdictions. RT therefore feels that additional objectives that Ofcom should include in its Diversity and Inclusion Programme are that Ofcom should (a) avoid imposing regulatory burdens that are unduly burdensome or impractical, in particular in relation to broadcasters who are established in jurisdictions other than the UK and whose workforce may be employed under other laws and (b) should plan for impact assessments to be carried out in relation to its proposals where they involve a major change in its activities and/or are likely to have a significant impact on non-UK broadcasters.

RT understands that Ofcom is seeking additional powers to require broadcasters to promote equal opportunities for a broader range of protected characteristics than those that are currently listed in the Communications Act 2003. RT also understands that Ofcom has duties under the Equality Act 2010 to promote equal opportunities in relation to a range of characteristics that includes not only those listed in the 2003 Act but also age, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief and sexual orientation. RT anticipates that the additional powers sought by Ofcom are in relation to these additional characteristics. It also anticipates that Ofcom is asking the Secretary of State to exercise his powers under sections 27 and 337 of the 2003 Act so as to confer on Ofcom powers to require broadcasters to promote equal opportunities in relation to those additional characteristics in the same way as for gender, racial group and disability and thereby to align the 2003 Act with the corresponding provisions of the Equality Act 2010.

RT understands that the relevant provisions of the Equality Act 2010 follow the precedent of the Employment Rights Act 1996 by leaving it to the courts to determine their territorial application. RT also understands that the courts have made it clear that the relevant provisions of the 1996 Act have no extra-territorial application unless there is a sufficiently strong connection with an employment in Great Britain. If the connection is insufficient, the Act does not apply. RT suggests that, if as appears to be the case Ofcom is seeking to align the regulatory regimes under the 2003 Act with the Equality Act 2010, the same territorial principle must therefore apply. If so, it would then follow that Ofcom's powers in relation to these matters would be limited to individuals working as employees in the UK and not those employed and working elsewhere unless, exceptionally, there were a sufficiently strong connection between their employment and the UK.

RT submits that any other result would be contrary not only to principle for the reasons set out above but also to practice. So far as practice is concerned, any attempt by a non-UK broadcaster to apply the UK Equality Act 2010, or criteria based on it, to working practices in other countries under foreign employment laws is likely to be impractical or at least unduly burdensome because of conflicts of laws.

RT draws Ofcom's attention to its duty under section 6 of the 2003 Act to keep the carrying out of its functions under review with a view to securing that regulation does not involve the imposition of burdens which are unnecessary and its duty under section 7 of that Act to carry out and publish an impact assessment in relation to any proposals that are "important" within the meaning of that section. It appears to RT that Ofcom's proposal to require broadcasters to promote equal opportunities for a broader range of protected characteristics than those that are currently listed in the 2003 Act is such a proposal. RT considers that applying this requirement to its non-UK workforce is an unnecessary burden and is not aware that Ofcom has yet carried out any impact assessment as required by the Act.