



Statement on the Ofcom
Broadcasting Code
Race Impact Assessment

Race Impact Assessment

Introduction

By amending and supplementing previously existing statutory provisions (in particular provisions in the Race Relations Act 1976), the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Statutory Duties) Order 2004 (SI 2004 No. 3125), make new provisions that will apply to Ofcom. From the beginning of June Ofcom is required to submit its policies to a race impact assessment and by 31 May 2005 Ofcom must have published a Race Equality Scheme. Consequently, Ofcom has been preparing to put in place formal procedures for monitoring policy for race relations.

The new obligations do not take effect until after the Broadcasting Code has been published. However Ofcom has nonetheless been mindful, in drafting and consulting on the Broadcasting Code, of the impact it might have on race issues. Its likely effects on different groups were considered when the draft code was drawn up, including consideration of whether there might be any negative consequences for particular racial groups.

Subsequent to the consultation we have also conducted an internal review of the Broadcasting Code and this report sets out our consideration of the impact of its provisions on race. This process has drawn on the guidance and checklist provided by the Commission for Racial Equality's ("CRE"), in particular the following questions set out in its Race Impact Assessment guidelines:

- Will the proposed policy involve, or have consequences for, citizen-consumers?
- Could these consequences differ according to people's racial group? (e.g. because they have particular needs, experiences or priorities)
- Is there any evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?
- Is there any evidence that people from some racial groups may have different expectations of the policy in question?

In summary we have concluded:

Ofcom is required under the Communications Act 2003 and the Broadcasting Act 1996 (as amended) to draw up a code for television and radio, covering standards in programmes, sponsorship, fairness and privacy. The focus of the Broadcasting Code is on adult audiences making informed choices within a regulatory framework which gives them a reasonable expectation of what they will receive, while at the same time robustly protecting those too young to exercise fully informed choices for themselves. The Broadcasting Code will therefore have consequences for citizen-consumers.

We have reviewed the Broadcasting Code to see whether any of its provisions could have different consequences according to racial group and, if so, whether there might be any negative effect on a particular group.

We have primarily taken into account responses to the Broadcasting Code particularly from the CRE given its experience in these matters. We have also taken into account past regulatory experience in this area including experience at Ofcom of complaints raised by members of the public which indicate areas that the public are concerned about.

Research commissioned to support the code consultation has indicated areas where different racial groups may have different expectations e.g. we have identified differences in what is viewed as offensive according to racial group. That research informs our web site guidance and has been published on our web site.

We believe that Sections One, Two, Three and Four of the Broadcasting Code contain regulation which potentially may have different consequences for different racial groups. The consequence, in all these sections, is that the rules may provide specific protection to those from ethnic minorities.

We are not aware of any evidence that the policy could discriminate unlawfully directly or indirectly against people from some racial groups. We believe that in this consultation with over 950 written responses including detailed responses from, amongst others, the CRE, any such effect would have been brought to our attention.

We now turn to the sections in greater detail.

Section 1

Protecting the Under-Eighteens

- 1.1 **Rules 1.2 and 1.3** which act to protect children (under fifteens) and provide for appropriate scheduling will also act as a protection against exposure by children to stronger material which is aimed at adults and could address racist themes but which children do not yet have the understanding to put in context and understand underlying editorial messages.
- 1.2 **Rules 1.14 to 1.16** in this section address the use of offensive language when children are particularly likely to be listening on radio and viewing pre watershed on television.
- 1.3 We explain at the top of Sections One and Two that the sections are to be read in conjunction. Rule 2.3 in Section Two: Harm and Offence (see below) specifically addresses discriminatory treatment (which would include portrayal) and language and that rule is cross referenced under these rules in Section One: Protecting the Under-Eighteens.
- 1.4 These rules should have the effect of minimising offensive language which is offensive on the grounds of race. Although research can never absolutely prove a link between exposure on television or radio and imitation by children we believe this is an appropriate precautionary approach which should limit the exposure of all children to offensive language on the grounds of race (which they might copy or be distressed by).
- 1.5 Rule 1.11 addresses violence. We have received representations from the Black and Minority Ethnic Cracking Crime project on the contentious subject of the glamorising of the gun crime and violence sub culture to young people.
- 1.6 This rule addresses all violence and requires it to be appropriately limited and justified by the context at times when children are particularly likely to be listening on radio and viewing pre watershed on television. As with Rules 1.14 to 1.16 this is an appropriate precautionary approach which should limit the exposure of all children to violence which they might copy or be distressed by. This will have the additional effect of limiting the depiction of gun crime which is a national problem but has caused particular concerns to certain communities in large cities.

Section 2

Harm and Offence

- 2.1 We have inserted a reference to Article 14 of the European Convention on Human Rights which says that “the rights and freedoms set [out in the European Convention on Human Rights] shall be secured without discrimination on any ground such as ...race...” (We also included this in Appendix 3.) This has been done to remind broadcasters that they should not discriminate on the grounds of race eg in matters relating to freedom of expression in broadcasting.
- 2.2 **Rule 2.1** requires that generally accepted standards be applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material. We have considered whether people from different racial groups may have different expectations of the Broadcasting Code. We have referred above to the research into sexual imagery and offensive language which indicates that different racial groups have different attitudes to offence e.g. British Asian females in this research were particularly concerned about the use of offensive language when the family was viewing. The research explores context. Contentiously, words that are generally accepted as offensive are also being taken into “ownership” by some of the young in those communities in a way that they feel is not offensive.
- 2.3 That would suggest therefore that different racial groups expect different protections from the Broadcasting Code in different contexts. We accept therefore that generally accepted standards may vary between different racial groups and we will take that into account where it is proportionate to do so when applying the standard objective laid out in 319(2) (f) of the Communications Act 2003 and encapsulated in this rule, that is, “that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusionof offensive and harmful material.”
- 2.4 **Rule 2.3** addresses offence. Following the consultation on the draft code, we decided to include a specific reference to race in Rule 2.3 which deals with matters of offence. This was as a result of responses from, amongst others, the CRE and Ligali requesting that race be mentioned on the face of the Broadcasting Code so that its importance was recognised. As a result we decided to mention the six areas of discrimination in alphabetical order which are or will shortly be covered by legislation in the United Kingdom. This is a clarification to aid readers. The policy has not changed.
- 2.5 Rule 2.3 now specifically mentions, amongst other offensive material, discriminatory treatment or language on the grounds of race. It requires that such material must be justified by the context and that appropriate information should be broadcast where it would assist in avoiding or minimising offence. These rules should act to protect all members of the public from exposure to such material which is not so justified and information should enable those who do not wish to see or hear such material to avoid it. As explained above research into sexual imagery and offensive language shows that different racial groups have different levels of tolerance to such material (although this may well vary according e.g. to age). The information referred to in Rule 2.3 will assist those with lower tolerance for material which may cause offence to avoid it.
- 2.6 **Rule 2.4** requires that programmes must not include (whether in individual programmes or in programmes taken together) material which, taking into account the context, condones or glamorises violent, dangerous or seriously anti-social behaviour and is likely to encourage others to copy such behaviour. Please see above regarding

Rule 1.11 and gun crime and violence sub culture for relevant arguments. This rule however is applied to protect all members of the public and not just those under fifteen.

Section 3

Crime

- 3.1 During work on the draft code we considered the need for a rule dealing explicitly with “incitement to racial hatred”. However, incitement to racial hatred is a criminal offence and as such carries criminal penalties which are imposed by the courts. The Broadcasting Code does not replicate criminal law which is outside of Ofcom’s jurisdiction. We have therefore not included such a rule in the Broadcasting Code.
- 3.2 It should be noted, however, that the opening rule of Section Three: Crime, expresses the standards objective set out in the section 319 (2) (b) of the Communications Act 2003.
- 3.3 **Rule 3.1** requires that material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services. This refers to all crime and protects all members of the public but would of course include incitement to hatred on grounds of race and so protects members of ethnic minorities.
- 3.4 We have also inserted a reference to Article 22a of the Television Without Frontiers Directive which refers to incitement to racial hatred as relevant to this section as a reminder to broadcasters. (It was already included in the relevant Broadcasting Code Appendix).

Section 4

Religion

- 4.1 Whilst most religions are, in general, not race specific it is the case that members of a religion may constitute a statistically significant proportion from a racial group. In London for example at the 2001 census those who described themselves as Hindu included 282,000 who described themselves as Asian and some 2,000 as white. Those who described themselves as Muslim included 353,000 who described themselves as Asian, 116,000 who described themselves as white and 80,000 who described themselves as black.
- 4.2 **Rule 4.2** requires that the religious views of those belonging to a particular religion or religious denomination must not be subject to abusive treatment. Given the statistical breakdown of those who follow specific religions that protection may positively benefit members of racial groups.
- 4.3 **Rule 4.7** requires that religious programmes that contain claims that a living person (or group) has special powers or abilities must treat such claims with due objectivity and must not broadcast such claims when significant numbers of children may be expected to be watching or listening. We have considered whether Rule 4.7 would have consequences for particular racial groups.
- 4.4 However, the primary purpose of this rule is to protect the under eighteens. This rule provides an important safeguard which has nothing to do with race. Nonetheless, parents may, if they wish, make provision to allow their children to see such programming. Consequently, Ofcom considers that this rule is reasonable and proportionate and does not unduly discriminate against or specifically adversely affect religions that have a particular minority ethnic following.

Sections 5 to 10

We judge these sections regarding due impartiality, due accuracy in news and undue prominence of views and opinions, election and referendums, fairness, privacy, sponsorship and commercial references) to be neutral in their consequences. The rules in these sections would act equally to protect all members of society. The only issue in these sections on which we received representations on the grounds of race – that is that sponsorship of channels services should be allowed as that might allow community services to commence - will now be allowed subject to a further consultation.