

Response from the Broadcasting Entertainment Cinematograph & Theatre Union to Ofcom's proposals for co-regulation of equal opportunities

BECTU is the trade union for workers (other than performers and journalists) in the audiovisual and live entertainment sectors. We are a recognised trade union within ITV plc; we have a significant number of members in BSkyB; and we have an extensive membership throughout the rest of the broadcasting and independent production sector.

Ofcom has a vital role to play with regard to the achievement of equal opportunities for under-represented groups within the broadcasting sectors that it regulates and therefore how it chooses to do so will have a substantial impact on progress one way or another.

Ofcom has requested that we follow the format of their questions as set out in the consultation document, which we have done.

Question 1

Please give your views on the above options and indicate which you prefer. Do you agree with our assessment of the benefits of introducing co-regulation for equal opportunities and of doing this by extending the current system for training and development supervised by the BTSR (option 2)? Do you believe that the factors identified above are the relevant ones? Are there any other factors which you believe should be taken into account?

BECTU strongly advocates option 1, maintaining the current arrangements for regulation of equal opportunities. Co-regulation for equal opportunities – whether as option 2 or option 3 – would be unwise as it could put broadcasters representing their sector in the unworkable position in which they could find themselves having to recommend to Ofcom regulatory action against their commercial competitors.

The BTSR does not appear to have had to deal with this issue. In their 2006 report on training they state that they received 77 self-evaluations plus 161 exemptions totalling 238 responses to the self-evaluation. There was no mention of whether any licencees failed to submit a response.

Ofcom's 2006 Equal Opportunities Returns, on the other hand, state that they received 106 reports and 249 exemptions but a further 30 licence holders failed to submit any return. Ofcom held all 30 to be in breach of their licences and made it clear that further breaches could lead to Ofcom removing their licences. A co-regulatory body which Ofcom envisages will include a representative from each of terrestrial television, cable/satellite and radio, would have to either take these decisions itself or recommend that course of action to Ofcom.

It appears to BECTU that putting licence holders in a position to recommend regulatory action against their competitors would raise issues of conflict of interest.

Although equal opportunities and training are often taken together, they are fundamentally different issues governed by different legislation and it is clear from Ofcom's 2006 Equal Opportunities Returns and the BTSR 2006 report that the industry itself views them very differently as well.

It is a commonly held view that training is the key to progress on equal opportunities. BECTU contends that while training is a valuable tool which does help to achieve such progress it is not the whole solution. Combining equal opportunities with training is likely in practice to reinforce the subsuming of equal opportunities issues into training.

BECTU does not believe that the benefits of co-regulation are likely to be as described in section 4.3. While there may be some level of consensus on the need for training, Ofcom's 2006 summary of its equal opportunities returns indicates that there is outright opposition to action on equality in some unnamed quarters; one in 13 licence holders are in breach of their licences through failure to send in any returns to the regulator; and a number of those who did respond doing so under protest or indicating that they have failed to carry out any meaningful equality monitoring, or indeed any at all.

At a time when awareness of equal opportunities issues is still at such a basic level in some parts of the sector it is inappropriate for Ofcom to retreat from dealing directly with this issue. We agree with Ofcom's view that more action needs to be taken by the industry but this needs to be *in addition to* Ofcom itself playing a proactive role. This can only be achieved through option 1.

We do not agree with Ofcom's analysis (4.4) of the benefits of extending the current coregulatory system. The self-evaluation process as described in the consultative document is not appropriate for equal opportunities monitoring (see question 4 below) and the funding and structure under option 2 is unlikely to deliver any significant additional benefits in terms of action on equality as distinct from that on training and Ofcom points out that it will be more expensive to run.

As Ofcom itself states, a lot of time and effort has gone into setting up the current system and providing information and assistance to the broadcasting licence holders as to how to work with it. The licence holders are now familiar with this system. To change it now would mean that several years' work and expense would be wasted.

Question 2:

Is the overriding objective of the co-regulatory system in section 5 how this should be expressed in your view? If not, how do you feel it should be expressed?

Even if regulation of equal opportunities is to be devolved to a co-regulatory body, its overriding objective nevertheless should adhere to the obligations on Ofcom as defined in the Communications Act. The overriding objective of the regulator suggested in 5.1 appears indistinguishable from those of existing diversity groups in the industry and does not mention regulation, which is the central focus of the consultation.

Question 3:

Is this the right list of functions? Or are there any which should be deleted or added in your view?

One omission from this list of functions is any detail of how the enforcement process would be carried out such as Ofcom's actions against 30 licence holders reported in its 2006 returns. Would that enforcement cease? How would the BTSR carry out this function?

Please also see our response under question 4 below regarding the function of equality monitoring.

Question 4

Do you have views on the kind of structure and method of operation which is likely to be most effective? For example, do you think the existing BTSR self-evaluation process and format can be adapted for equal opportunities and should the current system for reporting on equal opportunities be used? Or should new ones be created?

We have already stated our opposition to options 2 and 3. If option 2 were to be pursued by Ofcom then we feel that the regulator seriously underestimates the level of expenditure required if the BTSR were to adequately cover a function which would most likely take as much work as the BTSR currently undertakes on training. It suggests that it "may" be necessary to change the composition of the board to provide for at least one independent director with the necessary experience and expertise in equal opportunities. It further suggests that it "may" be necessary for the BTSR to acquire expertise in equal opportunities at staff level. This indicates a failure to understand the magnitude and seriousness of the task being proposed.

BECTU believes that the self-evaluation format used by the BTSR for training is wholly inappropriate for equal opportunities monitoring.

We note the substantial difference in response rates to the BTSR compared with Ofcom – 146 fewer to the BTSR – and given that there is no explanation of this shortfall we can only speculate that this may be that returns to the BTSR were from companies owning multiple licences while returns to Ofcom were by individual licence holders. Ofcom should clearly explain whether this is the case.

If this is so, this is another argument against using the BTSR system for equality monitoring. While there is a logic to monitoring training in this way, equality monitoring has to look at very different issues. For example a

company might have two licences, one for a “mainstream” channel and one for a channel targeted at an ethnic minority audience. It would be important to know the numbers of ethnic minority staff employed on each channel individually as sending in the data on a corporate basis could be misleading. It would be important to know whether all the ethnic minority staff were pigeonholed in the minority channel and not employed on the mainstream channel as this is an issue consistently flagged up by minority ethnic broadcasting professionals.

In his foreword to the 2006 BCSR report, BCSR Chair Stephen Whittle states: “Much of the BCSR’s year has been focussed on changing the way we measure training in the industry – from looking at impact rather than inputs, value rather than cost, output and effectiveness rather than crude numbers.”

The whole point of equality monitoring is to provide factual evidence of how well represented the traditionally under-represented groups are at different levels within the workforce. So “crude numbers” are ultimately what equality monitoring has to be about and Ofcom itself acknowledges this in its 2006 equal opportunities survey where it points out (section 4.1) that equality monitoring is held up as best practice by equality commissions and experts and that Ofcom “will continue to encourage broadcasters to apply more effective monitoring systems”.

It is surprising therefore to find that Ofcom is suggesting moving away from acknowledged best practice. We strongly agree with Ofcom’s alternative suggestion that “on the other hand, equal opportunities raises different issues from training which need to be handled with special care and sensitivity. Separate reporting formats for equal opportunities and training may therefore be more appropriate.”

BECTU has already taken issue with Ofcom over its rejection of its predecessor the ITC’s publication of equal opportunities returns licencee by licencee. Ofcom’s practice has been for all such information to be published without naming the licencees. Ofcom states that it does not have the right to publish this information.

BECTU’s ongoing appeal to the Information Commissioner will establish whether Ofcom already does in fact have the right to publish data without anonymising it. However, it is clear that the Communications Act does allow Ofcom to do so should it so choose as section 27 (2) makes it “the duty of Ofcom to take all such steps as they consider appropriate” for promoting equality of opportunity.

BECTU does not intend to rehearse all the arguments here. However the union believes that requiring equality monitoring and publishing the returns licencee by licencee would level the playing field for all licencees, set out clearly the facts and at a stroke make an immensely powerful contribution to progress on equal opportunities that no other organisation in the industry can make.

Further, we note that Ofcom in its 2006 returns no longer separated terrestrial television from cable and satellite, merely summarising equality monitoring figures under “television” and “radio”, citing the difficulty that some companies straddle both terrestrial and cable/satellite television and some staff work in both licences. This is not an insurmountable problem and BECTU urges Ofcom to find a way to re-establish the separate sectors.

BECTU believes that there is a very strong public interest in the issue of equality monitoring. The regulator awards broadcasting licences on behalf of the public and the public has an interest in being able to see how well the companies receiving these lucrative licences reflect the representation of the communities they serve and indeed profit from.

Question 5:

In the light of the impact assessment in Annex 5, do you agree with Ofcom’s proposal to introduce co-regulation and to do this by extending the BTSR’s remit (option 2)? Or do you favour either the status quo (option 1) or the creation of a separate co-regulatory system under a new body (option 3)?

As stated above, BECTU rejects the proposal to introduce co-regulation and urges the regulator to maintain option 1 with the additional changes we have set out.