

Draft guidance for religious bodies applying for Broadcasting Act licences -

Comments of consultees and Ofcom's response

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1. The comments of consultees and Ofcom's response are summarised below. Comments of general application appear first, and those relating to specific parts of the draft guidance are summarised under the corresponding headings in the final version of the guidance published on the Ofcom website.

Respondents

2. A number of responses was received from umbrella organisations, which were also endorsed by responses from individuals and bodies. The Churches' Media Council (CMC) has representatives from the main Christian denominations in Britain and Ireland, and its response was endorsed by the Church of England and by Revd. Peter Moth of the United Reform Church. The Evangelical Alliance (EA) said that it represents a majority of Britain's evangelicals, including many in the Anglican, Baptist, Methodist, Pentacostal, United Reform and other churches. Both the Christian Broadcasting Council (CBC), whose views were endorsed by Flame FM (a Restricted Radio Service licensee), and the Centre for Justice and Liberty (CJL) said that they had a varied membership amongst the independent Christian broadcast media industry. The Commercial Radio Companies Association broadly endorsed the submission of Premier Christian Radio (PCR).

3. In addition, there were responses from the Church of England's Archbishop's Council (C of E), the Church of Ireland, Ulster Television (UTV), the British Humanist Association (BHA), Mediawatch-UK (MW), the Theosophical Society and the Network of Sikh Organisations in the UK. There were also individual responses from Steven Abbot (a member of the International Bible Students' Association), Revd. Peter Moth (minister of the United Reform Church), Benedict Parsons (a member of the United Nations' Association Multi-Faith Religious Advisory Committee), and Paul Tavener.

General comments

Proposal to replace existing codes by a single code

4. There was support (CMC, PCR) for moving quickly to a single transparent code of guidance, so as to avoid the confusion that might arise from using the existing ITC and Radio Authority codes, and in order to ensure compatibility with human rights legislation.

Removal of presumption against religious bodies worshipping in private

5. Most of the religious groups who responded (the C of E, CBC, PCR, CIL, EA, Flame FM and the Theosophical Society) favoured the retention of the presumption that a religious body should not be eligible to hold a licence if its members worshipped collectively in private. A number questioned the ability of Ofcom to assess objectively whether a body whose rites were held in private was suitable to hold a licence. The EA said that the existing presumption remained a sensible safeguard, given the risk that closed meetings could be used to disseminate teachings that attack the foundations of a society committed to religious freedom. CMC expressed concern that any body which held its rites in private, but refused public access to them, could not be relied upon to portray fairly its belief structures and rituals in any broadcast. It expressed concern that such organisations would use broadcasts to aid recruitment. Mediawatch-UK considered it inappropriate that public access to collective observances should be the principal consideration for Ofcom, although it laid considerable emphasis on the risks attached to licensing groups that claimed to be religious bodies, but actually had sinister motives.

6. Other respondents, while concerned about the risk posed by bodies holding their observances in private, adopted a different stance. UTV considered that religious bodies which worshipped in private should be eligible for licences. The Church of Ireland saw no reason why private collective observances should of themselves be grounds for denying a licence to a religious body, provided that Ofcom is satisfied that applicants met the tests set out in the guidance. The Revd. Peter Moth agreed in principle that other parts of the guidance should provide safeguards against unscrupulous cults, but sought more detail about how they would be applied in practice. The BHA accepted that the ban on religious bodies which do not open their worship to the public would probably be contrary to human rights, and Shaun Hexter and Paul Tavener argued that retention of the current presumption would be an infringement against the freedom of expression of bodies holding their religious observances in private.

7. Ofcom's response: Ofcom recognises the concern felt by several respondents that religious bodies which do not allow public access to their acts of worship may be seeking to conceal matters which would be relevant to whether those bodies should be eligible to hold broadcasting licences. In the event that such a body did apply for a licence, Ofcom would expect to seek further evidence and, if necessary, advice from other parties, before making a determination as to whether the body in question was eligible to hold a licence. If it was not satisfied that it could obtain sufficient information, or that a relevant body or person had made false representations, it would be open to Ofcom to determine that the body should not be eligible to hold a licence. Indeed, the guidance makes specific provision for this.

8. Existing provisions in the Broadcasting Act 1990 make clear that if an applicant makes false representations during the licence application procedure, the licence may be denied, or if issued, revoked. Ofcom accepts that it may be helpful to reflect this in the guidance, and has amended paragraph 5 accordingly. However, Ofcom does not consider that the fact that members of a religious body worship in private is, of itself, an indication that such a body should be ineligible to hold a licence. To make a judgement on this basis would imply Ofcom considered it unacceptable for religious bodies to hold their worship in private, and Ofcom does not consider that this would be appropriate.

Comments on the draft guidance

Paragraph 1: Definition of religious bodies

9. MW considered it important that terms such as religion, faith or belief are carefully defined by Ofcom for the purposes of granting broadcasting licences. The Theosophical Society pointed to a huge diversity in the type of organisations that might be considered religious, and suggested that one basis for dealing with the ‘virtually impossible’ basis of establishing criteria would be to exclude bodies that demanded payment for their teaching, membership or services. It also suggested common features that would help to identify whether a body was religious, such as a belief in a controlling power or powers, and in an orderly cosmic process in which there was balance and harmony.

10. Ofcom’s response: Ofcom notes that the Communications Act 2003 already contains a definition of ‘belief’ for the purposes of describing public service broadcasting objectives – ‘“belief” means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines’ (section 264(13)). Ofcom considers that it would be difficult to go beyond this to devise a definition of religious bodies that would encompass all possible permutations, and secure a broad consensus. More significantly, Ofcom believes that it is important that it retain the discretion to make a judgement on whether a licence applicant is a religious body, based on the particular circumstances of each case. Accordingly, Ofcom does not propose to provide further guidance on what it considers to be a religious body.

Paragraph 2: list of licences which religious bodies are eligible to hold

11. Several groups (CMC, PCR) urged that the guidance reflect a positive presumption that religious bodies could hold all Broadcasting Act licences, with certain exceptions. CMC suggested that the guidance simply list those Broadcasting Act licences that could not be held.

12. Ofcom’s response: Ofcom considers it likely that not all religious bodies considering applying for a broadcasting licence will be familiar with the wide range for which they may be eligible. Ofcom thinks that it will be more helpful to prospective applicants to have a full list of relevant licences, together with the references to the legislative source to assist them and their legal advisers, as well as to list those licences that religious bodies may not hold.

Paragraph 4: Human Rights Act exclusions

Exclusion on grounds of illegal behaviour

13. CBC, EA and Flame FM called for a definition of illegal behaviour to provide clarity for broadcasters. They were concerned that this phrase might be interpreted to include behaviour that some people or groups found objectionable, even if it was within the law.

14. Ofcom's response: The reference to 'illegal behaviour' is taken directly from the European Convention on Human Rights. Ofcom believes that this term is unambiguous and that it means 'contrary to law'. Ofcom does not consider that it is appropriate or practical to further qualify the term, given the many types of behaviour that would be contrary to law. If Ofcom were to interpret the term in a manner that aggrieved parties considered unwarranted, it would be open to them to seek judicial review.

15. It is worth noting that, under paragraph 4 of the guidance, Ofcom would also require to be satisfied that applicants had both the ability and the intention to comply with the standards set by Ofcom in compliance with the Communications Act 2003. These include both general programme standards that require (amongst other things) that members of religious minority faiths be treated with dignity and respect; and specific provisions (section 7 of the television programme standards code) dealing with religious programming. These prohibit programmes that denigrate the beliefs of others. There are similar provisions in section 7 of the radio programme standards code.

Exclusions on grounds of health and morals or rights and freedoms

16. A number of respondents (CBC, PCR, MW) expressed concern that certain traditional religious practices might be interpreted as injurious to the health and morals of practitioners or others, and contended that Ofcom should not treat them as harmful. Examples quoted included the circumcision of babies, the refusal of medical treatment, the undertaking of penances, fasting and strict dietary laws. MW argued that the defence of 'settled stability' could be used to defend the circumcision of babies. The CMC said that Ofcom's consideration of health should specifically include mental and emotional health, as well as physical health. CJL said that Ofcom should be sensitive to the varied lifestyles and disciplines of religions in the UK.

17. For its part, the BHA argued that certain religious practices and policies were prejudicial to the welfare of participants and others, including opposition to contraception (and to aid programmes linked to family planning), intolerance of same-sex relationships, and the promotion of physical punishment. Both the BHA and the Network of Sikh Organisations also expressed concern about the risk of crude proselytising, particularly of the kind that plays on superstitious fears, suggesting that there is only one path to God, and that those following different paths will either be punished or disadvantaged by God. UTV agreed that Ofcom should have regard to the considerations set out in the draft guidelines.

18. Several respondents (CBC, EA, Flame FM) contended that the promotion of particular lifestyle choices based on the moral standpoints of religious groups should not be regarded as infringing the rights and freedoms of others; indeed, Flame FM and EA argued that the education of listeners on issues of Christian moral standards should be considered as enhancing the rights and freedoms of others rather than infringing them. Examples of moral positions taken by various

religious groups included the sanctity of marriage, promotion of abstinence from alcohol and drugs, the practice of chastity, respect for parental authority, the inappropriateness of same sex relationships, and the requirement of some religious groups for separate worship by men and women. The BHA argued that there were many organisations whose teaching was incompatible with human rights on such matters as gender issues and family life. It suggested that the guidance should set out the boundaries of what was acceptable. It also called for careful regulation of broadcasting on issues of political contention.

19. PCR asked how Ofcom could act as the arbiter of acceptable religious practice, and expressed concern that practical difficulties would lead to restrictions that would force broadcasters to migrate offshore. Shaun Hexter cautioned that Ofcom would have to be very careful in exercising judgements about what was injurious to the health and morals of others, or infringed their rights and freedoms. CMC asked who would judge compliance with the behavioural tests, and asked for a robust appeals process, with published judgements. PCR said that it was important for transparency in Ofcom's judgements as to whether the practices of a religious body were such as to make it unsuitable, and whether it could meet the requirements placed upon all prospective licensees. Finally, some respondents (CBC, EA) asked that Ofcom take action against those broadcasters that caused offence amongst religious people by the content of their broadcasts.

20. Ofcom accepts that it may be called upon to make difficult judgements in interpreting the code. However, there is no practical alternative to this. The Act makes clear that Ofcom must make a determination as to the eligibility of a religious body to hold a licence (see paragraph 15 of Schedule 14). Ofcom considers that the criteria set out in the guidance, having regard to human rights legislation, are appropriate for this purpose.

21. There is no statutory provision for an appeals process, so Ofcom is not empowered to establish one that could overrule a decision it had made. However, where it is considered that a religious body should not be eligible to hold a licence, the matter will be referred to either or both of the main Board or the Content Board for a decision, depending on the circumstances. If Ofcom decides to refuse a licence, it would expect to notify the applicant of and make public the criterion or criteria in the guidance under which Ofcom has determined it would not be appropriate for the applicant to hold the licence in question. However, Ofcom reserves the right not to make this public where this would not be appropriate.

22. Many of the issues raised by respondents in connection with the consultation on the guidance are concerned with the programme standards applying to licensees (whether religious bodies or not). The current standards are the same as those applied by the ITC and the Radio Authority, and can be found on Ofcom's website in the category entitled 'Codes and Guidance'. These standards are intended, amongst other things, to protect the legitimate right of religious programming to propound, propagate and proclaim religious belief. They are also intended to protect viewers and listeners from offence and exploitation, including the risk of programming that seeks to persuade or influence them through preying on their fears. However, the standards are not a matter for the guidance, except that Ofcom will be required to be satisfied that applicants have both the ability and the intention to comply with these standards (see paragraph 15 above). Ofcom will be consulting on aspects of these standards during the course of 2004, when comments from interested parties will be welcome.

Threats to public safety or national security, or to the integrity, authority and impartiality of the judiciary

Paragraph 5: ability to meet requirements placed upon all licensees

23. The CMC suggested that if a body was a full member of an organisation such as Churches Together in Britain & Ireland (or its national equivalent), this should suffice to demonstrate the credentials of the body. In cases of doubt, Ofcom should seek evidence from such faith-based bodies. Steve Abbot suggested that recognition of a body's charitable status by the Charities Commission should suffice to demonstrate that it was 'a fit and proper' person.

24. Ofcom's response: Ofcom has the legal responsibility of determining whether a religious body is appropriate to hold a licence and cannot delegate that responsibility to any other organisation. That said, in cases where Ofcom seeks advice from other parties, it may well seek evidence of the good standing of the applicant from appropriate organisations, including organisations of which the applicant is a member.

Paragraph 7: grounds for revocation of a determination of eligibility

25. PCR suggested that a decision on whether a religious body was eligible to hold a licence should be a once-and-for-all decision.

26. Ofcom's response: Ofcom considers that it would be more appropriate to consider each licence application on its merits, given that circumstances may change or additional factors bearing on the suitability of a religious body to hold a licence may come to light. Clearly, the fact that a religious body held a licence and remained in good standing would make it easier for Ofcom to conclude that the body was eligible to hold an additional licence.

Other issues

27. CMC agreed that the impact of the draft guidance would be no more onerous than the existing regime.
28. PCR said that CRAC is not an official representative body, and should not be the primary body with which Ofcom consults. They strongly suggest that, in meeting its own consultation tests, Ofcom should consult the church through its denominations and groupings. CMC made similar points.
29. Ofcom's response: Ofcom consulted a wide variety of bodies, including denominational bodies, umbrella religious groupings, and CRAC. It also publicised the consultation through a press release and its website, and made clear that it would welcome comments from any interested parties. As a result of this consultation, it has added additional organisations to its mailing list of groups interested in religious issues. In any future consultation on matters concerning religious broadcasting, Ofcom would expect to consult a similarly broad and diverse range of interested parties, including CRAC.
29. Flame FM asked that the guidance also highlight the rights to freedom of thought, conscience and religion; freedom to manifest religion and beliefs within the limitations of the law, and not infringing them.
30. Ofcom's response: Ofcom has endeavoured to ensure that the guidance is fully informed by human rights legislation. However, the guidance is intended to be a practical guide to religious bodies considering applying for a licence, rather than a declaratory statement of principles.
31. PCR hopes that Ofcom will use its powers to strengthen religious broadcasting.
32. Ofcom's response: Ofcom will be examining the role of religious programming as part of its current review of Public Service Broadcasting. Further details of this review are given on Ofcom's website. However, it would not be appropriate for Ofcom to intervene in the field of non-public service broadcasting to favour one genre over another.
33. Benedict Parsons asked whether an assurance could be offered that the Office of the United Nations Religious Rapporteur and various other bodies were fully satisfied that the disqualifications comply with the UK's obligations to the UN. In particular, he questioned whether it was reasonable for associates of religious bodies to be disqualified, and whether this term extended to persons such as Sunday School teachers, choirmasters and bellringers.
34. Ofcom's response: The provisions on disqualifications in the Communications Act 2003 were proposed by the Government and legislated by Parliament. Accordingly, they are not a matter on which it would be appropriate for Ofcom to offer comment.