



CAP and BCAP consultation: harm and protected characteristics

Response from The Vegan Society

To Committee of Advertising Practice,

1. The Vegan Society is a registered educational charity that provides information and guidance on various aspects of veganism and supports vegans and those wishing to adopt veganism. The Vegan Society defines veganism in the following way¹:

'Veganism is a philosophy and way of living which seeks to exclude—as far as is possible and practicable—all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose; and by extension, promotes the development and use of animal-free alternatives for the benefit of animals, humans and the environment. In dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals.'

2. The Vegan Society notes that CAP and BCAP wish to introduce new rules on harm and protected characteristics (as defined in the Equality Act 2010). This is because, although neither CAP or BCAP, nor the ASA, are listed as a 'public authority' in Schedule 19 of the Equality Act 2010, both CAP and BCAP consider that they are likely to fall within the wider definition of 'person exercising a public function' in section 149(2), and therefore, consider themselves subject to the Public Sector Equality Duty (PSED). In the light of this observation, CAP and BCAP seek to ensure that the protections they provide to those sharing protected characteristics is 'as strong as possible.'

3. Vegans have the protection of human rights and equality law, and are, therefore, beneficiaries of the Public Sector Equality Duty. For example, see:

- W. v. The United Kingdom App. No(s). 18187/91
- European court of Human Rights:
https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf
- Human Rights Act 1998: <https://www.equalityhumanrights.com/sites/default/files/religion-or-belief-guide-to-the-law.pdf>
- Equality Act 2010 Mr J Casamitjana Costa v The League Against Cruel Sports:
https://assets.publishing.service.gov.uk/media/5e3419ece5274a08dc828fdd/Mr_J_Casamitjana_Costa_v_The_League_Against_Cruel_Sports_-_3331129-18_-_Open_Preliminary_Hearing_Judgment___Reasons.pdf
- Anti-discrimination law Northern Ireland: <https://www.equalityni.org/Individuals/I-have-a-work-related-problem/Religious-belief-Political-opinion>

¹ <https://www.vegansociety.com/about-us/further-information/memorandum-and-articles-association>



4. The Public Sector Equality Duty is a statutory duty developed to deal with unfairness and prejudice. It requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it, and,
- Foster good relations between people who share a protected characteristic and people who do not share it.

Guidance states that ‘having due regard means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by public bodies – such as how they develop, evaluate and review policy; how they design, deliver and evaluate services’:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf

Having due regard to the need to advance equality of opportunity involves considering the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics;
- meet the needs of people with protected characteristics...

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf

Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others. Compliance with the Public Sector Equality Duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve making use of an exception or the positive action provisions:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf

5. Despite having legal protection and having a ‘protected characteristic’ for the purposes of the Equality Act 2010, vegans often find that they have to struggle for inclusion in a world of prejudice towards non-human animals. The Vegan Society receives numerous complaints from vegans, some of which are dealt with through a relevant formal complaints process or workplace grievance. The Vegan Society relies heavily on legal provisions to support vegans, and on public bodies to uphold the law and comply with the Public Sector Equality Duty when vegans are harmed by unfairness, disadvantage and prejudice. The Vegan Society believes that entrenched prejudice towards vegans is evident in a recent ASA ruling² regarding the AHDB ‘We Eat Balanced’ campaign (case G21-1092229). The proposal by CAP and BCAP to align the concept of harm with protected characteristics, to offer the strongest possible protection is important to vegans and veganism.

² <https://www.asa.org.uk/rulings/agriculture-and-horticulture-development-board-g21-1092229-agriculture-and-horticulture-development-board.html>



Numerous vegans, vegan organisations, and The Vegan Society recently submitted complaints to the ASA about advertisements that referred negatively to the diet of vegans, to promote meat eating. The advertisement was strategically planned for release during 'Veganuary' (January) which is well-known to be a month of support for transitioning vegans, and a celebration of veganism.

The ASA ruled in favour of the advertiser. The Vegan Society believes that this ruling breached the Public Sector Equality Duty because the ASA failed to consciously give due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. As such, the ruling failed to remove or minimise disadvantages suffered by vegans or meet the needs of vegans and failed to tackle prejudice and promote understanding.

Although CAP and BCAP seek to ensure that the protections they provide to those sharing protected characteristics is 'as strong as possible', The Vegan Society believes that the ASA has failed to uphold this important principle with regard to the harm caused to vegans and veganism.

6. The Vegan Society therefore agrees with the following CAP and BCAP's proposed rules:

CAP Code

Marketing communications must not include anything likely to cause harm. To comply with this rule, marketers must have particular regard to the likelihood of causing harm to vulnerable people, and to the following characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

BCAP Code

Advertisements must not include anything likely to cause harm. To comply with this rule, broadcasters must have particular regard to the likelihood of causing harm to vulnerable people, and to the following characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

7. While The Vegan Society supports the adoption of CAP and BCAP rules, it is concerned that the ASA is not adequately 'consciously thinking about the three aims of the Equality Duty as part of the process of [its] decision-making' in relation to harm caused to vegans. The Vegan Society therefore recommends that the amended Code of Practice lists not only the duty to examine harm in relation to the 'protected characteristics', but also explains veganism as an example of a qualifying non-religious belief that must be given appropriate due regard, as required by law.