

CONSULTATION ON THE PROPOSED OFCOM DRAFT BROADCASTING CODE

Response from the British Humanist Association

Introduction

The British Humanist Association welcomes the opportunity to respond to the consultation on the draft Ofcom Broadcasting Code. We have restricted our comments to two areas: Section 7, which deals with religion, and issues relating to broadcasting about the 'paranormal'.

The British Humanist Association

The British Humanist Association (BHA) is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is committed to human rights and democracy, and has a long history of active engagement in work for an open and inclusive society.

The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers' Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.

Section 7 of the Draft Broadcasting Code - Religion

We have sympathy with Ofcom in drafting this section, given the confused inheritance of law and regulation. However, we find the draft as presented unsatisfactory and in need of reconsideration. In many of our suggestions we have drawn on the BBC's proposals, since we agree broadly with their criticism of the form of your draft although we often disagree strongly as to substance.

'Religion' or 'religion or belief'?

The first difficulty arises from a confusion in the Communications Act. Section 319 refers in subsections 2(e) and 6 to 'religious programmes', whereas section 264 in subsections (6)(f) and (g) refers to 'programmes . . . that deal with religion and other beliefs' as part of the obligation laid on public service broadcasters.

Section 264 was amended in debate so as to conform with the Human Rights Act (HRA), which protects freedom of religion *or belief* and prohibits discrimination on grounds of religion or belief by public authorities. The HRA - sensibly - does not define 'belief', leaving the meaning to be interpreted by reference to case law, which clearly establishes that the protected beliefs include non-religious Humanism (see Annex I), and by reference to the French and (especially) German versions of the European Convention of Human Rights (ECHR) on which the HRA is based: the French version uses the strong word '*conviction*' while the German version uses '*Weltanschauung*' - world-view or perhaps 'belief system' or 'lifestance'. It is clear therefore that no trivial interpretation of 'belief' is meant in the HRA. There is a (somewhat unsatisfactory) definition of belief in the Communications Act at section 264(13) but that also is incompatible with trivial or incidental beliefs (*pace* the BBC's reference in their response to your consultation to groups such as the Boy Scouts as having a 'systemised set of ethical or philosophical principles').

(The HRA likewise sensibly includes no definition of 'religion' and we reject the BBC's proposal that a definition be included in the Code, especially one on the lines the BBC suggests which would exclude from consideration programmes not only about non-religious belief systems such as Humanism but also about many acknowledged but non-theistic religions such as classical Buddhism and Jainism.)

The HRA's prohibition of discrimination on grounds of religion or belief by public authorities applies to all public service broadcasters and to Ofcom itself. We suggest that the Communications Act at section 319, in mandating special attention to religious programmes, may be in breach of the HRA, and we are certain that Ofcom, if its Broadcasting Code were to offer protection to religions but not to non-religious beliefs within the meaning of the HRA, would likewise be in breach of the Act.

We therefore welcome the inclusive nature of the draft Code's proposed definition of 'religious programmes' as programmes dealing with 'matters of religion or belief'. (We have other criticisms of the definition, however - see below - but reject strongly the BBC suggestion which narrows its focus to religions only.)

Sadly the drafting of the Code itself is inconsistent with this definition and is often ambiguous:

(a) the draft second Principle refers only to 'religious views and beliefs of a religion or religious denomination'.

Suggestion: We agree with the BBC's criticism of the confusion between principles and rules - and in this case also legislation. The three principles are so closely drawn from the Act that their slight variations of wording add nothing but potential confusion. The BBC's redraft as a single principle would be satisfactory if it recognised non-religious belief as well as religion, but we suggest the following wording which refers also to Article 10 of the ECHR - freedom of expression, which should be fundamental in the context of broadcasting:

To ensure that broadcasters balance the right to freedom of thought, conscience and religion or belief both with the right to freedom of expression and with their responsibility to protect the vulnerable and avoid unnecessary offence or likely harm.

(b) Proposed rule 4.2 refers to 'the religious views and beliefs of a religion or religious denomination'; rule 4.3 to 'religious views and beliefs' and rules 4.4 and 4.5 to 'religious views or beliefs'. These references are highly ambiguous: does the adjective 'religious' qualify only 'views' or both 'views' and 'beliefs'? If the latter, then no protection is offered by the draft Code to non-religious beliefs - in breach of section 6 of the HRA.

Suggestion: We take it from the use of the word 'religious' in these phrases that the need is to distinguish, in relation to a religion or religious denomination or a belief system, the tenets and beliefs that are centrally germane to it, as against those that are incidental - e.g., to distinguish the Church of England's affirmation of the 39 Articles from its view that it should retain its 26 seats in the House of Lords. Such incidental 'views' would be naturally excluded if the broad word 'views' were removed (despite its appearance in the Act) and wordings on these lines might therefore be considered:

the doctrines, tenets and beliefs of a religion, religious denomination or belief system

'Religious programme'

The Act does not define what it means by 'religious programmes', and we suspect that too little thought has been given by Ofcom to the question, which we believe is one of the most difficult in this discussion. We assume, however, for the reasons given above that any protection provided under section 319 to religions will extend also to non-religious belief systems.

An unduly broad definition of religious programmes - such as that proposed in the draft Code - would include all the following categories of programme:

- A. evangelical promotion of a religion or belief system direct to viewers or listeners (like some American channels)
- B. evangelical promotion of a religion or belief system to those present at a broadcast gathering
- C. broadcasts of religious services, prayers, hymns etc designed to provide a service to existing adherents (including most broadcast services, prayers and Radio 4's *Thought for the Day*)
- D. uncritical accounts (i.e., of a broadly educational nature) of a religion or belief system and of its contested truth claims (e.g., the biblical accounts of creation and of the life of Jesus, the stories of the Hindu gods etc.)
- E. commentaries or documentaries composed broadly within the assumptions of a religion or belief system (e.g., C4's Kumbha Mela coverage or speculative reconstructions of the history of a religion made on its own terms)
- F. discussion between parties in disagreement with each other about questions of religious belief
- G. reports on the affairs of a religion or belief system and its manifestations in the world (e.g., a programme about who might be the next pope, about the Church Commissioners' investment policies or about the good work of a religious charity)
- H. critical or investigative reports on an organisation related to a religion or belief system for its incidental behaviour, not linked to its doctrines (e.g., the *Panorama* programme on the Jehovah's Witnesses for their failure to combat child abuse by their own elders or a similar programme about the Roman Catholic Church)
- I. critical or investigative reports on a religion or belief system for the effects of its doctrines and beliefs (e.g., the *Panorama* programme about effects of the Roman Catholic Church's doctrine that leads to its intervention to restrict programmes for family planning or to combat AIDS)
- J. reasoned critiques of the central beliefs and values of a religion or belief system or of its claims about its own history (e.g., a programme on the lines of the book *The Jesus Mysteries* suggesting that Jesus Christ may not have been a historical figure)
- K. presentation of the case that a religion or belief system is untrue and/or deleterious to human welfare
- L. denunciations of a religion or belief system

- M. drama that features a religion or belief system, either incidentally or centrally
- N. comedy and jokes about religion in various formats of programme.

(This list may not be exhaustive - and some categories may in fact rarely if ever be found in the schedules - but the categories in it are distinguishable from each other even if real programmes sometimes share the character of more than one category. Magazine programmes may of course include items from several categories.)

Section 319 refers to 'programmes which are religious programmes', but it cannot be sensibly maintained that the section, with its restrictions to protect religions, refers to all the categories of programmes listed above. The purpose of section 319 is to regulate those programmes commonly thought of as religious, not to impose restrictions on all programmes that make any reference to religion or religious institutions or practices.

We are therefore seriously alarmed at the suggestion by Ofcom that 'a current affairs programme or a programme about the history of a religion, where religion or belief is a significant part of the programme' should be seen as a 'religious programme'. This would mean, for example, as pointed out above, that two recent editions of *Panorama* would have been 'religious programmes'! Suppose that a documentary programme were broadcast in a current affairs slot showing that the doctrines of a new religion were invented by its founder and that they were incoherent nonsense and dangerous to their adherents - a quite plausible scenario. Is that a 'religious programme' subject to the rule that these pernicious beliefs must not be abused? We are certain that Parliament never intended such a consequence of its wish to regulate the programmes that appear in the widely recognised 'religious slots'. Those 'slots' do not, of course, represent a way of defining 'religious programmes', and so some further analysis is needed.

Reverting, therefore to our list, we suggest that categories A to F are certainly included within Parliament's intended definition of 'religious programmes', but equally certainly, for example, M or N (drama or comedy) are not, G perhaps and H and I probably not (since they are all concerned with secular aspects of the religion or belief system in society and would often appear in 'mainstream' programmes), J, K or L maybe not (insofar as they are - or would be - clearly irreligious rather than religious - but if the criticism was in effect a promotion of an alternative religion or belief system, the programmes would fall into A or B).

Some programmes will be those 'programmes dealing with religion and other beliefs' mandated by the Act under section 264 for public service broadcasters, some will be on non-PSB services.

It is logically possible and probably sensible to conclude that some of the 'programmes dealing with religion and other beliefs' (section 264) will not in fact be 'religious programmes' (section 319): for example, the programmes mentioned in section 264(g)(i) and (ii) 'providing news and other information about different religions and other beliefs' and 'about the history of different religions and other beliefs'. After all, these programmes will be covered by all the other sections of the Code including those about protecting young people, those about harm and offence, about fairness, and either the section about impartiality and accuracy (the wording of which could well be extended to reduce the emphasis on 'political and industrial' matters) or the BBC's parallel provisions. The risk otherwise is that a definition of 'religious programmes' would embrace, because of their subject matter, many programmes that would not otherwise be thought of as religious. (However, as we point out below, the important category for regulation is programmes committed to a particular religion or belief.)

Suggestion: We would urge Ofcom to adopt a definition of 'religious programmes' for the purpose of section 319 on lines similar to that suggested by the BBC but

amended to cover non-religious belief systems so as to conform with section 6 of the HRA:

A religious programme is a programme which deals with the doctrines, tenets and beliefs of a religion, religious denomination or belief system as its central subject.

We would see this as covering broadly the categories A to F in our list.

The Draft Rules

(On the proposed principles, see above)

The draft rules are required by section 319(6) which relates only to religious programmes. This needs to be made clearer by being explicit in the wording of each rule as well as being stated at the head of the section.

The BBC criticises the Code's use of the word 'espouses' (rule 4.4). We suggest instead that this is a central distinction that needs to be made in the rules: i.e., between programmes made within the assumptions of a commitment to a religion or belief system (mainly those in categories A to E above) and those made from an uncommitted stance. The point of the distinction is that in our view the programmes made from a neutral standpoint do not need to be regulated as much as those made on the basis of a commitment to (or theoretically against) a religion or belief system.

Proposed Rule 4.1: 'A proper degree of responsibility must be exercised by broadcasters regarding the content of religious programmes.'

This repeats the law in section 319 and is in our view therefore unnecessary and potentially confusing as a rule in the Code. It is also largely empty of content, since broadcasters need to exercise a proper degree of responsibility in respect of all programmes, and the guidance offers no help as to what is a proper degree in respect of religious programmes.

Suggestion: We have no objection to the rule suggested in its place by the BBC, provided it is amended as already suggested above:

Broadcasters must seek to ensure that the beliefs of individuals and the doctrines, tenets and beliefs of a religion, religious denomination or belief system are not misrepresented or discriminated against in a religious programme as judged against generally accepted standards.

Proposed Rule 4.2: 'The religious views and beliefs of a religion or religious denomination must not be abused.'

We have set out above our reasons for objecting to the drafting of the first eleven words of this rule and our alternative formulation. We are further concerned by the broad and unspecific nature of the word 'abused', especially given the extraordinarily sensitive nature of many religious believers to what they see as misrepresentations.

Suggestion: We suggest (on the basis of the key definition of 'abuse' in the OED) that the rule be amended as follows:

The doctrines, tenets and beliefs of a religion, religious denomination or belief system must not be maligned or reviled in any religious programme.

If instead the BBC version commended itself to Ofcom, we should want to see it amended as follows:

Broadcasters must respect the right of individuals to freedom of religion or belief, including the right to worship, teach, practise and observe their religion or belief. Religious programmes, however, should not be used to denigrate other religions or beliefs.

Proposed Rule 4.3: 'Descriptions of religious views and beliefs must be presented with due accuracy and fairness.'

If our proposed substitute rule 4.1 is adopted, this rule will be unnecessary.

Proposed Rule 4.4: 'A programme which espouses religious views or beliefs must make the identity of the religion and/or denomination clear to the audience'

We are broadly happy with this rule, subject to our general drafting points. We should welcome greater clarity as to how the making clear should be achieved: specification of a statement at the start of the programme would be welcome. We assume that it is to apply to digital religious channels in respect of each of their programmes, i.e., whenever the station identity is given: if necessary this should be made clear in the drafting of the rule.

We strongly reject the BBC's apparent attempt to exclude from the provisions of the rule broadcasts of church services etc.: a programme consisting of a Christian service, including a sermon, is plainly 'espousing' Christianity - the OED defines 'espouse' as 'to choose, attach oneself to (any object); to take to oneself, make one's own (a cause, quarrel, etc.); to become a supporter of (a party); to adopt, embrace (a doctrine, opinion, theory, profession, mode of life). The BBC's proposed phrase 'seeks to commend' in lieu of 'espouses' would open questions about whether many programmes made from a committed viewpoint were actually seeking to commend a religion etc. or merely to provide a service to existing believers.

Suggestion: We suggest this rewording:

A religious programme which espouses the doctrines, tenets and beliefs of a particular religion, religious denomination or belief system must make the identity of that religion and/or denomination or belief system clear to the audience by an announcement at the start of the programme.

Proposed Rule 4.5: 'If a programme's underlying purpose is to convey religious views or beliefs, or to seek recruits, then the broadcaster must make that purpose clear to the audience, if it is not already evident.'

Similarly we broadly accept this proposed rule although, with the BBC, we see considerable overlap with rule 4.4 which should be eliminated. The distinction is between programmes which provide a service to existing adherents and those which seek to convert.

Suggestion: We suggest this rewording:

A religious programme which seeks to convert or seek recruits from viewers or listeners to a particular religion, religious denomination or belief system must make this purpose and the identity of that religion and/or denomination or belief system clear to the audience by an announcement at the start of the programme.

We strongly agree with the ITC Code that such programmes are unsuitable for channels that are not specialist religious channels. Viewers of or listeners to general broadcasting channels - or specialist channels in another area - would feel abused if they found themselves ambushed by such a programme. A new rule should state clearly:

No religious programme which seeks to convert or seek recruits from viewers or listeners to a particular religion, religious denomination or belief system shall be broadcast on any channel that is not a specialist religious channel.

Proposed Rule 4.6: 'Programmes may not improperly exploit the audience by preying on their susceptibilities.'

We see no need for this rule, which merely provides confusion by varying the wording of the law ('any improper exploitation of any susceptibilities of the audience for such a programme'). If a rule is desired for the sake of completeness, it should either use the precise wording of the law or else add significantly to it: at present we see no need for such addition, which could only have the effect of limiting the law.

Proposed Rule 4.7: 'Programmes that contain claims that a living person (or group) has special powers or abilities must be treated with due objectivity and may not be broadcast at a time when significant numbers of children may be watching or when children are particularly likely to be listening.'

We agree with the BBC that the ideas in the ITC Code 'legitimate investigation' and 'incapable of being substantiated' should not be lost. 'Legitimate' in the context is an odd word of very unclear meaning - would it be 'illegitimate' for a committed religious programme to 'investigate' such claims by asking a succession of believers - perhaps people who thought they had been 'cured' - their views? A better phrase would be 'objective investigation', and 'investigation' should be extended to include discussion.

Further, 'incapable of being substantiated' allows claims to be made if they are alleged to be capable of substantiation but have not yet been substantiated. Given the audacity of some religious sects in making claims, we think this is too permissive and that claims should be allowed only if they have been substantiated. We further propose that the rule extend not only to living people but also to deceased people and to religious relics and artefacts (e.g., statues of Ganesh that drink milk or of Jesus that exude blood). If our proposed version of the rule is adopted, we see no need for the special reference to children: the idea that religious claims may be questioned is one that is altogether healthy.

Suggestion: We suggest this rewording:

Religious programmes must not contain claims by, or about, people or groups of people, living or deceased, or about religious relics or artefacts suggesting they have special powers or abilities, unless these claims are in the context of objective investigation or discussion or they have been substantiated.

Questions

- 7a) We have suggested many changes to wording and have explained our reasons above.
- 7b) We have suggested that neither the principles nor the rules should merely repeat

or paraphrase what is already in the law. The legal requirements might be quoted at the head of this section of the Code, followed by the single principle we have suggested, followed by the re-worded rules. We strongly reject the proposed interpretation of 'religious programmes' and suggest an alternative.

- 7c) We are strongly opposed to allowing religions (or non-religious belief systems) to appeal for funds for themselves on television.

We find the discussion in section 14.7 confused and unhelpful. For example, option 2 is to 'retain the prohibition on religious programmes on television appealing for funds' - yet the discussion of it says: that it

'would mean that new services could be started. This is a significant effect. There would be economic benefit to the new broadcasters and to those who work in the industry. There would be more choice for viewers. This again is significant.'

This is incoherent nonsense. It seems to refer in fact to the unnumbered additional option inserted after 'Option two', ('to lift the prohibition for specific religious services but keep it for religious programmes on television') where 'specific religious services' presumably means 'specialist religious channels' and 'television' presumably means 'other channels'. Even so, it seems to place quite exaggerated importance on a few additions to the thousand and one existing channels ('more choice' - a waning political mantra) and on the economic gains from yet more shoestring channels.

The reason for a ban on televised appeals on religious programmes is that the record of religious organisations in making television appeals for funds is extraordinarily disreputable, especially in the USA. The naive religious beliefs and fears of (especially) poor people are exploited to gather vast funds to finance lavish facilities and high-style living by the religious leaders, many of whom have been proven to be hypocritical, immoral and corrupt.

There is no reason why the UK should risk the same situation arising here. The same religious groups would very quickly establish themselves and exploit the situation. Already there are religious groups in the UK explicitly linking salvation to payments to the church. No doubt the movement of funds involved adds to economic growth. So would the sale of babies for adoption or of organs for transplant. Ofcom's deference to any chance of economic growth needs to be reined in.

The fact that some marginal television channels that are regulated abroad do in fact make appeals to their small audiences is no more reason for relaxing the UK's ban than similar cross-border regulatory disparities is for allowing hard-core pornography because it is allowed elsewhere or relaxing our animal cruelty laws because other countries are more permissive. The case for such changes in our rules needs to be made on its merits, not slid through on a foreign precedent and a promise of marginal economic benefit for an interested small group.

- 7d) We have argued above that recruitment should be banned except on specialist religious channels.
- 7e) We have covered this above, where we suggest a redraft of the rule which, if adopted, would require no special reference to children.

Sections 1 and 2: Paranormal material etc.

We are dismayed that Ofcom propose, without any acknowledgement of what it is doing and within months of the ITC's consultation and revision of their code on programmes featuring the paranormal, to scrap virtually all the provisions then agreed and put into force. Ofcom seems to be pandering to broadcasters who are greedy for susceptible audiences and the advertising they bring. Once again, Ofcom seems to slip into regarding broadcasting merely as an economic activity that it assumes it should promote rather than seeing it in its larger cultural and social context as a powerful influence that it has been created to control. It is symptomatic that Ofcom put sceptical quotation marks round the word 'protected' in their reference to children.

The comparison between the reasonable and only recently agreed code currently in force and the new proposals is stark:

Current code:

Actual demonstrations of exorcisms and occult practices, such as those involving the purported invocation of unknown spirits of the dead or negative forces, are not acceptable in non-fictional programming except in the context of a legitimate investigation. . . . Demonstrations of clairvoyance, clairaudience, and similar practices are acceptable only when they are clearly and explicitly presented as entertainment, or when they are the subject of legitimate investigation.

Proposed code:

Demonstrations of exorcism, the occult, the paranormal, divination and related practices must be treated with due objectivity.

Current code:

When presented for entertainment purposes, measures should include announcements before and at the end of programmes to indicate their nature as entertainment, and appropriate acknowledgement of the existence of differing opinions as to the true nature of clairaudience and clairvoyance.

Proposed code:

Entertainment programmes that contain such demonstrations must be clearly labelled as such for the audience.

Current code:

Programmes should not include specific advice to particular contributors or viewers about health or medical matters, the law or personal finance or include specific advice which might significantly influence behaviour in relation to personal relationships. They should not include advice which might be damaging or unduly distressing to those concerned or which might unduly disconcert the likely audience.

Proposed code:

No potentially life changing advice may be given. (*Life-changing advice includes advice about health, finances, employment, relationships etc.*)

Current code:

[Actual demonstrations of exorcisms and occult practices, such as those involving the purported invocation of unknown spirits of the dead or negative forces] should not, in any

case, be shown before the watershed.

Programmes [including demonstrations of clairvoyance, clairaudience, and similar practices] should not be included at times when significant numbers of children are expected to be watching: for example, before the watershed on public service channels.

Proposed code:

Demonstrations of the paranormal must not be transmitted when significant numbers of children may be expected to be watching in the case of television or are particularly likely to be listening in the case of radio.

or else

Demonstrations of exorcism and the occult must not be transmitted before the watershed, or when children are particularly likely to be listening.

We urge that the current code should be retained in all its essentials. If the current code was widely agreed to be necessary less than a year ago for PSB channels under the ITC, there is no reason why it should not be applied equally to the BBC and to digital channels. If the future is one in which the digital distinction is to be progressively eroded, then it is sensible to establish the required standards now rather than later when it could only be more difficult.

The British Humanist Association's response to the ITC consultation is attached as Annex 2. We have added bold face to the key sections to which we wish to draw your attention.

In answer to Question 5a (Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?) we therefore answer that the rules about paranormal programming etc are not proportionate to the need and that the existing rules should be substantially retained and applied generally to all broadcasters.

**Hanne Stinson
British Humanist Association
October 2004**

Annex 1

HUMAN RIGHTS ACT 1998

(a) Extracts

3. - (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section-

(a) applies to primary legislation and subordinate legislation whenever enacted;

6. - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. . .

(3) In this section "public authority" includes-

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature . . .

(6) "An act" includes a failure to act . . .

ARTICLE 9 - FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 14 - PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(b) Relevant Court Cases under Article 9 of the ECHR

"As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned." - *Kokkinakis v Greece: (1994) 17 EHRR 397, para 31*

"The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - *Manoussakis v Greece: (1996), EHRR 387, para 47*

Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - *McFeekly v UK: (1981), 3 EHRR 161*

“The term ‘beliefs’ . . . denotes a certain level of cogency seriousness cohesion and importance” - *Campbell and Cosans v. UK: (1982), 4 EHRR 293 para 36* - (this case related to Article 2 - right to education).

In *re Crawley Green Road Cemetery, Luton* - St Alban’s Consistory Court: Dec. 2000 - it was taken held without argument that Humanism was a belief within the meaning of the Human Rights Act.

(c) Commentary

From the UN Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights (*which is essentially similar to Article 9 of the European Convention*):

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” - *Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)*

ITC CONSULTATION ON “PARANORMAL PROGRAMMING”

Response from the British Humanist Association

The British Humanist Association

- 1 The British Humanist Association (BHA) is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is committed to human rights and democracy, and has a long history of active engagement in work for an open and inclusive society.
- 2 The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers' Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.
- 3 In terms of the “segmentation” described on page 15 of the “*Beyond Entertainment*” research, the people the BHA represents would generally fall within the 22% of the population described as *Rational Rejecters – disbelief in an afterlife and dislike of ideas and concepts for which there is no concrete proof*, although we might prefer to describe our stance as “rejection of claims for which there is no substantial evidence, including claims that there is an afterlife”, and comment that “extraordinary claims require extraordinary evidence”.^a

Our Response

- 4 **We find it surprising that while claims about the effectiveness of medical treatments are tightly regulated, there is little or no regulation of claims about psychic or similar abilities. Outside television, paranormal, occult and psychic “practitioners” are amongst the few groups that are permitted to make completely unsubstantiated claims, and to take payment for their “services”, without fear of legal action. It is one of the few areas where those who make their living by conning vulnerable people, in this case particularly the recently bereaved and people having longer-term difficulties coping with bereavement, can practise unhindered.**
- 5 This puts the ITC into the difficult position of having to define the boundaries of what is acceptable in television programming in an area that is otherwise unregulated. It also means that **the ITC must take responsibility for the longer term effects of the programmes it permits, and there can be little doubt that both non-fictional and “entertainment” programmes about occult and psychic practitioners tend to increase belief in such abilities and makes vulnerable individuals more vulnerable to those who wish to deceive them.**
- 6 The BHA is also concerned that **the sheer volume of “entertainment programmes” involving “psychic abilities” or “psychic phenomena” carries dangers of its own.**

^a Carl Sagan

If television audiences were only very occasionally exposed to such programmes, they would be unlikely to cause a great deal of harm, but frequent exposure will inevitably encourage the gradual suspension of healthy scepticism.

- 7 We do not accept that there is a clear distinction between occult and psychic practices. Both aim to persuade the audience to accept claims for which there is no scientific evidence, and are often very successful in achieving this, particularly with vulnerable people. We note the ITC research showing that viewers tend to see “occult practices” involving the “purported invocation of unknown spirits or negative forces” as negative and undesirable, while “psychic phenomena” are seen as “positive gifts and harmless”. It seems the purported conjuring of demons and evil spirits is inappropriate on television, while the purported conjuring of the spirits of dead relatives and friends, or anonymous but “benign” spirits, is acceptable. We fail to understand the logic in this argument.
- 8 It seems to us that the actual distinction being made is largely based on whether the medium, clairvoyant or clairaudient, who may well be claiming to be receiving messages from “unknown spirits” as well as from “relatives”, says positive and reassuring things, or negative and frightening things. This seems to us to be dangerous, since **the most vulnerable people are precisely those who for psychological reasons want to hear positive messages, for example that they are forgiven or loved, hence they are also the most likely to be taken in by the convincing fraudster when that person says positive and supportive things. This belief in the “psychic” then also makes them more vulnerable to the negative, with the result that supposedly harmless popular entertainment on television results in people being more likely to be exploited or harmed elsewhere. There are no regulations covering what happens in a private reading by a “psychic”, who has successfully built his or her reputation on television, or indeed by others, who may be even less responsible in the way they exploit the vulnerable.**
- 9 There is no doubt that outside television, **there is a huge and very lucrative “psychic industry” that exploits gullible and vulnerable people by claiming to be able to contact the dead. Repeated exposure to very skilled “psychics” on television, whether in documentaries or entertainment programmes, creates or reinforces belief in “psychic phenomena”, and makes people vulnerable to exploitation, including by those practising in the areas that the research population considered “occult” and dangerous. Television appearances give “psychics” a level of credibility that is quite unwarranted.**
- 10 **We do not think that labelling a programme “entertainment” makes it acceptable to portray claims of communicating with spirits without an accompanying statement that the entertainer’s claims are unproven, and that the programme producers cannot guarantee that cheating is not involved. Even those who believe in “psychic abilities” recognise that many people who claim to be “mediums” or to have other “psychic abilities” cheat by using techniques well-known to psychologists and stage magicians, such as “cold reading”, research into the lives of individuals in the audience, and the placing of stooges in the audience. It must be made clear that the claims being made are unsubstantiated and possibly fraudulent.**
- 11 The BHA accepts that the proposed new section 1.10 strives to protect children by restricting programmes to after the watershed or to minority channels, but **we still have serious concerns about children being exposed to any “psychic” programmes, whether investigative or “entertainment”. Children are particularly vulnerable to exploitation by so-called “psychics”, because they will generally be less able to assess evidence, and hence more likely to believe those skilled in misleading**

people. Those working with children are often concerned about the level of credulity amongst children^b, much of it based upon what they have seen on TV. Entertainment programmes on “psychic phenomena”, if they do not give equal time to a sceptical viewpoint, undermine children’s developing abilities to analyse evidence, reason, and reach appropriate conclusions (as indeed is required by the National Curriculum).

- 12 We are also concerned that the free rein given to minority channels, such as Living TV, may have an impact beyond that expected from the small number of viewers. These channels will particularly attract people whose interest has been whetted by watching mainstream entertainment programmes, and those who are the most vulnerable. We agree with Sara Ramsden’s claim that such channels exploit people’s grief.^c Living TV may offer counselling to people involved in such shows (which in itself appears to be an admission that they may be harmful), but can of course do nothing to help those affected by watching the programme at home, including those who, as a result of what they have seen, go to visit another “psychic practitioner”.
- 13 Regarding factual programmes, we believe there is an important issue of quality. **Many programmes that purport to be legitimate and objective investigations do not tackle the subject with sufficient rigour. For example, the subjects who appear in these programmes are rarely challenged if they say that everything the medium said was true, even when it is very apparent to sceptics in the audience that many statements “missed the mark”. The very well-known phenomenon that people note and remember only the bits that are true is rarely brought out in such investigations. These inadequate investigative programmes reinforce unsubstantiated beliefs.**

Our recommendations:

- I That the proposed new section 1.10 be adopted with **an additional requirement that all “entertainment programmes”, including horoscopes, palmistry and similar “psychic practices”, and demonstrations of “clairvoyance”, “clairaudience” and similar, are accompanied by a statement (written text and spoken word) before and after the programme to the effect that there are known ways of achieving the same or very similar results through such methods as psychological manipulation and conjuring tricks, and the programme producer cannot guarantee that trickery has not been used in this programme.**
- II That **these statements should be accompanied by signposting to demonstrations and research, for example on the internet, showing how these same phenomena can be achieved without “psychic” abilities.**
- III That **there should be strict limits on the total time devoted to “entertainment programmes” of this kind.**
- IV That the quality of programmes claiming to be investigations of “psychic phenomena” be monitored by or on behalf of the ITC or Ofcom against objective criteria.

**Hanne Stinson
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^b anecdotal evidence from teachers

^c Sara Ramsden, Controller of Sky One, speaking at the Edinburgh Television Festival 2003