

Our Reference: 1-129421779

5 November 2009

Lord McDowall
Email to: request-20957-fccd7ade@whatdotheyknow.com

Dear Lord McDowall

Thank you for your request for information which was received on 13 October 2009.

I have addressed each of your questions in turn, below.

1) *The BBC editorial guidelines confirm that OFCOM has confirmed that using 'gay' to describe something bad or negative is not insulting (<http://www.bbc.co.uk/guidelines/editorialguidelines/newsletter/2007may/2007may.shtml>). Please provide full details of the rationale behind this decision, please provide copies of the guidance issued and which organisations were involved in this directive being created (e.g. Stonewall etc).*

As stated in the BBC's newsletter, Ofcom considered complaints about the use of the word "gay" in an episode of the programme "Top Gear" broadcast on 16 July 2006.

I have enclosed a copy of Ofcom's full published decision in relation to this broadcast, which can also be found at:

http://www.ofcom.org.uk/tv/obb/prog_cb/obb85/issue85.pdf

Request for the rationale behind Ofcom's decision

The published decision contains all of Ofcom's reasoning in relation to this case.

Request for copies of guidance issued

Please note that Ofcom's "Top Gear" decision did not result in it issuing 'guidance'. Therefore there is no 'guidance' to provide.

Request for 'which organisations were involved in this directive being created'

Please note that Ofcom's "Top Gear" decision did not result in it issuing a 'directive'. Therefore I can provide no information about 'which organisations' were consulted in creating 'this directive'.

By way of background, the "Top Gear" decision was taken in Ofcom's capacity as the independent broadcasting regulator with requirements under the Communications Act 2003. In accordance with its duties under the Communications Act Ofcom created a Broadcasting Code ("the Code") which sets out standards that

broadcasters must abide by. In creating this Code, Ofcom undertook an extensive public consultation and continues to consult with the public whenever it makes significant changes to any section of the Code.

In relation to the "Top Gear" finding, Ofcom reached a decision as to whether the broadcast breached its Code. It provided the broadcaster, the BBC, with an opportunity to submit its response to the complaint, in accordance with its published procedures.

2) Please confirm why OFCOM do not censure organisations who refer to members of the LGBT community as being 'gays' or 'homosexuals', in the same way which OFCOM would step in if the terms 'blacks', 'Asians' etc were used by broadcasters.

Ofcom's approach to regulation of offensive material must take account of the broadcasters' and viewers' rights under Article 10 of the European Convention on Human Rights. This provides for the right to freedom of expression and encompasses the broadcaster's right to "*impart information and ideas*" and also the audience's "*right to receive information and ideas without interference by public authority*".

When complaints relating to offensive language are received, Ofcom considers them on a case-by-case basis.

To use your example of the words "gays" or "homosexuals", if Ofcom were to consider specific complaints about the use of these words in a particular programme, Ofcom would adopt the approach it takes when considering any word that has the potential to offend. That is, it would view a recording of the relevant broadcast and consider whether the language was offensive in relation to the Code and if so whether its use was justified by the context. It would then make a judgement about whether the potentially offensive word was broadcast in such a way as to comply with 'generally accepted standards'. If Ofcom decided that any offence could not be justified by context then it would find the broadcaster in breach of the Code.

As I am sure you can appreciate, it would not be appropriate for Ofcom to simply 'ban' the use of particular words from television and radio services on all occasions whatever the context, because they have the potential to offend. Such an approach would infringe broadcasters' and viewers' Human Rights and fail to account for contextual factors such as tone, intent, humour and historical relevance, to name but a few. Clearly there are occasions when the use of a potentially offensive word can be justified by context.

You should note that if a broadcaster used the words "Blacks" or "Asians" there would not necessarily be a potential issue under the Code, just as there would not be necessarily be an issue with the use of the words "gays" or "homosexuals".

3) Please confirm which organisations OFCOM consult with in relation to LGBT related matters.

All complaints against broadcasting content and standards are assessed against the Broadcasting Code. As referred to above, the Code was created and can only be amended after public consultation with stakeholders having the opportunity to provide comment or opinion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Harries', with a long, sweeping flourish extending to the right.

Andrew Harries
Public Affairs Executive
andrew.harries@ofcom.org.uk

This email is sent as routine correspondence from the Public Affairs Team and has not been treated as a response to a request for information under the Freedom of Information Act 2000. If you think it should, please let us know.