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for everyone

Procedures for investigating  
breaches of content standards on  
BBC broadcasting services and  
BBC on demand programme  
services

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# Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services

## Introduction

- 1.1 This document outlines Ofcom's Procedures for the handling and resolution of complaints (or for the conduct of its own investigations) about the BBC's compliance with the content standards set under section 319 of the Communications Act 2003 ("the 2003 Act") and the BBC Charter and Agreement<sup>1</sup>. These Procedures are effective from 3 April 2017<sup>2</sup>.
- 1.2 These Procedures apply to BBC UK Public Broadcasting Services ("BBC broadcasting services") and BBC UK Public On Demand Programme Services ("BBC ODPS")<sup>3</sup>.
- 1.3 Under the BBC Charter and Agreement, Ofcom has no remit to consider complaints concerning the BBC World Service and these procedures do not apply to material broadcast on the BBC World Service.
- 1.4 Procedures applying to services provided by BBC commercial broadcasting companies licensed by Ofcom and procedures applying to BBC commercial on-demand programme services notifiable to Ofcom are available separately on the Ofcom website<sup>4</sup>. Further, separate procedures apply to the consideration of Fairness and/or Privacy complaints<sup>5</sup>.
- 1.5 If Ofcom considers it necessary to depart from these Procedures in any material respect in a particular case, for reasons of fairness and/or in order for Ofcom properly to consider a complaint or carry out an investigation, it will write to the BBC (and any other relevant parties) in advance setting out the nature/extent of its departure, and its reasons for doing so.
- 1.6 As material on BBC ODPS (in comparison with broadcast material) will often remain available for viewing, a risk of any harm from a breach of content standards may be ongoing. An example of where it may therefore be appropriate to depart from these Procedures (in particular, to expedite the process) is where a potential breach involves incitement or the protection of minors, and the material remains available for viewing.

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<sup>1</sup> <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

<sup>2</sup> Other methods of redress may be available to complainants through the civil courts. Complainants may wish to obtain legal advice.

<sup>3</sup> Such as the BBC iPlayer and iPlayer Kids (both audiovisual and sound programmes).

<sup>4</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

<sup>5</sup> See: <https://www.ofcom.org.uk/resources/documents/tv-radio-and-on-demand/guidance/bbc-broadcast-procedures/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf>

## Statutory framework

- 1.7 Ofcom's duties in relation to broadcasting include securing the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services: section 3(2)(e) of the 2003 Act.
- 1.8 In securing the application of those standards, Ofcom must have regard to the need to do so in the manner that best guarantees an appropriate level of freedom of expression: section 3(4)(g) of the 2003 Act.
- 1.9 Ofcom has a further duty under section 319 of the 2003 Act to set such standards for the content of programmes to be included in television and radio services as appear to Ofcom best calculated to secure certain "standards objectives". Those standards objectives are set out in section 319(2), and Ofcom is required to establish codes containing these standards. For the purposes of that duty, Ofcom applies the provisions of the Ofcom Broadcasting Code ("the Broadcasting Code")<sup>6</sup>.
- 1.10 Ofcom regulates the BBC by virtue of section 198 of the 2003 Act to the extent that provision to do so is contained in the BBC Charter and Agreement, the 2003 Act and Part 5 of the Broadcasting Act 1996. The Charter and Agreement set out the BBC's obligations to comply with the Broadcasting Code and Ofcom's powers to investigate and enforce compliance by the BBC.
- 1.11 Under the BBC Charter and Agreement, in addition to the BBC's UK broadcast services, BBC ODPS must comply with the Broadcasting Code so far as Ofcom determines the standards are relevant to the provision of BBC ODPS<sup>7</sup>.
- 1.12 Ofcom is required under the BBC Agreement to set and publish procedures for handling and resolving complaints referred to them about the BBC. Complaints and investigations concerning standards covered by the Broadcasting Code (other than about Fairness and Privacy) will be governed by these Procedures.
- 1.13 Ofcom may launch investigations on its own initiative as well as investigate complaints. The Procedures followed in a complaint-led investigation and an Ofcom-initiated investigation are the same.

## Procedures

### Making a complaint

- 1.14 Complaints about services provided by the BBC (other than those raising issues of Fairness and Privacy) should normally be made to the BBC<sup>8</sup> in the first instance, using one of the following methods:

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<sup>6</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0027/95760/Broadcasting-Code-Review.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0027/95760/Broadcasting-Code-Review.pdf), with the exception of Sections Seven ("Fairness") and Eight ("Privacy"), which Ofcom applies in relation to Fairness and/or Privacy complaints under separate procedures: see paragraph 1.4 above.

<sup>7</sup> BBC ODPS are also subject to certain statutory requirements under Part 4A of the 2003 Act, including rules in relation to harmful material and product placement.

<sup>8</sup> This 'BBC First' approach does not apply to BBC Fairness and/or Privacy complaints, which may be made directly to Ofcom.

Online, at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint>

Phone, on: 037 0010 0222 or 037 0010 0212 (textphone)

Post, to: BBC Complaints, PO Box 1922, Darlington DL3 0UR

- 1.15 Ordinarily, Ofcom will only accept a complaint that has first been considered by the BBC. The BBC considers complaints against its Editorial Guidelines, which reflect the relevant provisions of the Broadcasting Code.
- 1.16 Complaints under these Procedures can be made to Ofcom by any person or body who considers that the BBC has failed to comply with the Broadcasting Code in relation to its broadcasting services funded by the licence fee and/or BBC ODPS in the following circumstances:
- a) if a complainant is not satisfied with the resolution of a complaint by the BBC;
  - b) if a complainant considers, following the resolution of a complaint by the BBC, that the imposition by Ofcom of a sanction, where available, against the BBC may be appropriate;
  - c) the BBC has failed to resolve a complaint within the time period set in the relevant BBC procedures.
- 1.17 See paragraphs 1.24 to 1.26 below for details about the time limits that apply to referral of complaints to Ofcom.
- 1.18 Ofcom may, in exceptional circumstances, intervene at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC. Such circumstances may include (but are not limited to) Ofcom having potential concerns about material that: is likely to incite crime; may cause financial or physical harm, or harm to minors; involves under 18s in a programme or series; raises problematic issues of a systemic nature within the broadcasting industry that may affect the BBC; has resulted in a 'whistleblower' complaint that it may not be appropriate for the BBC to resolve first<sup>9</sup>. Whether Ofcom decides to intervene at an earlier stage in any such complaint will depend on the relevant facts in each case.
- 1.19 Ofcom will consider the complaint and the BBC's final response to it against the Broadcasting Code. Relevant sections of the Broadcasting Code (<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>) are as follows:
- Protecting the Under-Eighteens (Section One);
  - Harm and Offence (Section Two);
  - Crime, Disorder, Hatred and Abuse (Section Three);
  - Religion (Section Four);

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<sup>9</sup> See paragraph 1.23 and footnote 11

- Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions (Section Five);
- Elections and Referendums (Section Six);
- Commercial References in Television Programming (Section Nine);
- Commercial Communications in Radio Programming (Section Ten);

1.20 Fairness and/or Privacy complaints under Sections Seven (“Fairness”) and Eight (“Privacy”) of the Broadcasting Code must be made under Ofcom’s “Procedures for the consideration and adjudication of BBC Fairness and Privacy complaints”: available at Annex 2, below.

### **Form of complaint and information to be provided**

1.21 Ofcom requests that complaints are submitted on its complaint form, available at <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint>. Alternatively, you may contact us at: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone either 0300 123 3333 or 020 7981 3040. If you have a text phone you can call 020 7981 3043 (please note that this number only works with special equipment used by people who are deaf or hard of hearing). A Video Relay Service to contact Ofcom in British Sign Language is available on Ofcom’s website.

1.22 All complaints should include sufficient detail about the matter complained of. Specifically, complaints should include:

- the name / title of the programme<sup>10</sup> complained about;
- the date and time of the (broadcast) programme or the date the BBC ODPS was accessed;
- the channel on which the programme was broadcast or its location on the BBC ODPS;
- the nature of the complaint and (where possible) the particular parts of the programme complained about;
- the complainant’s full contact details (including e-mail address if available)<sup>11</sup>;
- when the complainant submitted a complaint to the BBC;
- the final response the complainant received from the BBC or, if the BBC has failed to reach a decision in the timeframe set out in its own procedures, the most recent correspondence from the BBC on the issue; and
- any other material the complainant considers relevant.

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<sup>10</sup> References to “programmes” in these Procedures include teletext, subtitles and anything included in the BBC’s broadcast services or BBC ODPS.

<sup>11</sup> Please see Ofcom’s General Privacy Statement (available on our website at: <https://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement>) for information about how Ofcom handles your personal information and your corresponding rights.

The inclusion of these details (or as many of them as possible) is very important. A failure to provide them may mean that Ofcom is not able to investigate the complaint.

- 1.23 Unless a complainant specifically requests at the time a complaint is made that his/her name and contact details should remain confidential, Ofcom may disclose them to the BBC. Ofcom will consider requests from complainants to remain anonymous<sup>12</sup>.

### When a complaint can be made

- 1.24 As set out in paragraph 1.15 above, complainants (other than those whose complaints relate to Section Seven (Fairness) or Eight (Privacy) of the Broadcasting Code) should in the first instance submit their complaint to the BBC in accordance with the BBC's own complaints procedure, which provides that complaints should be submitted within 30 working days of broadcast or of the date on which the programme first appeared on the BBC ODPS. Ordinarily, Ofcom will not accept a complaint that has not first been considered by the BBC.

- 1.25 The BBC's complaints handling procedures are available here: <http://www.bbc.co.uk/complaints/handle-complaint/>. These outline the stages involved in handling a complaint:

- The BBC aims to reply within 10 working days of receipt of a complaint. This is known as Stage 1a of the BBC's procedures. If a complainant is dissatisfied with the BBC's reply at Stage 1a, the BBC's procedures set out how a complainant can write back to BBC Audience Services.<sup>13</sup>
- The BBC will investigate the complaint and aims to reply within 20 working days, or 35 working days in the case of more complex complaints (the BBC will inform complainants at the outset which timeframe applies). This is known as Stage 1b of the BBC's procedures. If a complainant is dissatisfied with the reply from the BBC at Stage 1b, the BBC's procedures set out how to take a complaint to the Executive Complaints Unit (ECU)<sup>14</sup>.
- The ECU aims to provide a response within 20 working days, or 35 working days in the case of more complex investigations (and will inform complainants at the outset which timeframe applies). This is known as Stage 2 and the BBC's response at Stage 2 is the **BBC's final response** under its procedures.

- 1.26 The complainant should wait to see if they are satisfied with the BBC's final response before referring a complaint to Ofcom. If the complainant is not satisfied (or considers that the imposition by Ofcom of a sanction against the BBC may be appropriate), the complainant should refer their complaint to Ofcom (with the BBC's final response) as

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<sup>12</sup> This does not apply to whistleblowers. Ofcom is a "prescribed person" under Part IVA of the Employment Rights Act 1996 (as inserted by the Public Interest Disclosure Act 1998) to which "qualifying disclosures" can be made about certain matters, including broadcasting and the provision of television and radio services. Ofcom has published guidance (available on our website at: <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines>) on how individuals working in the communications sector may contact us if they have concerns about possible wrongdoing at their own organisation (or their former organisation) and where they have been unable to raise or resolve those concerns internally.

<sup>13</sup> See paragraph 2.6 of the BBC's editorial complaints procedures

<sup>14</sup> See paragraph 2.7 of the BBC's editorial complaints procedures

soon as possible, and in any event within 20 working days of the final response by the BBC under its procedures.

- 1.27 If the BBC has not provided its response to a complaint within a relevant time period set in its procedures, the complainant may submit the complaint to Ofcom and should do so within 20 working days of the relevant BBC time period.
- 1.28 If a complaint is submitted to Ofcom later than 20 working days after the BBC's final response (or, if no response is received from the BBC, later than 20 working days after the relevant BBC time period), complainants should explain to Ofcom why the complaint was not submitted earlier. Ofcom will then consider all relevant factors (including the complainant's explanation for the delay in submitting the complaint and the limited time periods during which the BBC is required to keep recordings)<sup>15</sup> in deciding whether or not Ofcom should investigate the complaint despite the delay in submission.

### **Ofcom's initial assessment of a complaint**

- 1.29 All complaints are important to Ofcom as they help us to understand whether the BBC may be failing to comply with the applicable provisions of the Broadcasting Code in a particular case. Ofcom will log and acknowledge every complaint that it receives. Ofcom will carry out a process of initial assessment, as follows.
- 1.30 Ofcom will first consider whether, on its face, a complaint raises potentially substantive issues under the Broadcasting Code that warrant investigation by Ofcom. It will do so by reference to the gravity and/or extent of the matter complained of, including, for example, whether it involves harm to minors or severe financial or physical harm; and whether Ofcom considers the BBC reached an appropriate decision on the matter. In addition, if Ofcom considers that the BBC has reached an appropriate decision, it will consider whether the imposition by Ofcom of a sanction against the BBC may be appropriate.
- 1.31 Ofcom may ask the BBC for a copy of the relevant programme at this stage, which must be provided within five working days<sup>16</sup>. We may also request any other background material or evidence we consider may be relevant to Ofcom's initial assessment of the complaint, however we will not normally request written representations from the BBC at this stage.
- 1.32 Based on Ofcom's initial assessment of the complaint, the BBC's final response to the complaint under its own procedures, and any other relevant material/evidence from the BBC, Ofcom will consider whether there may have been a breach of particular provisions of the Broadcasting Code that Ofcom considers requires further investigation.
- 1.33 If Ofcom considers that a complaint does not raise a substantive issue under the Code which warrants investigation by Ofcom then it will decide not to investigate the complaint further and will notify the complainant by publishing its decision in its

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<sup>15</sup>Ofcom has determined that the BBC must retain recordings of radio programmes for at least 42 days after broadcast; recordings of television programmes for at least 90 days after broadcast; and copies of programmes made available on BBC ODPS for at least 42 days after they cease to be available for viewing. If a complaint is made, the BBC must retain the relevant recordings or copies, and any related material, for those periods of days, running from the date on which the BBC may reasonably expect the complainant to have received its final response to the complaint.

<sup>16</sup> Under the BBC Agreement, the BBC must comply with any request to produce recordings of programmes and any related material to Ofcom.

Broadcasting and On Demand Bulletin, which is published fortnightly on its website: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/><sup>17</sup>.

- 1.34 Ofcom aims to complete its initial assessment of any complaint within 15 working days.

### **Investigating possible breaches**

- 1.35 Other than in cases falling within paragraph 1.35 below, when Ofcom considers that further investigation is required Ofcom will write to the BBC seeking representations. Ofcom will summarise the material parts of the complaint, set out the particular provisions of the Broadcasting Code that it considers relevant and applicable to the complaint, and invite the BBC to make representations in response (including any relevant material/evidence in support of its representations) within 10 working days. Ofcom may request that the BBC provides material/evidence from its own consideration of the complaint<sup>18</sup>. Ofcom will publish details of programmes under investigation on its website, at: <http://stakeholders.ofcom.org.uk/enforcement/audience-complaints/>.
- 1.36 There may be cases where the matter(s) in issue, on the facts, mean that Ofcom does not consider it necessary to seek representations or information from the BBC to reach a Preliminary View. In such cases, Ofcom will write to the BBC with its Preliminary View on the complaint, as set out in paragraph 1.38 below.
- 1.37 Ofcom aims to complete cases it takes forward for investigation within 50 working days.

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<sup>17</sup> This may include circumstances where a complaint did raise a potential substantive issue under the Code but the issue was appropriately dealt with by the BBC and an investigation by Ofcom is not warranted.

<sup>18</sup> Under Article 47 of the BBC Charter, Ofcom may require the BBC and any other person to provide information for the purposes of the carrying out by Ofcom of their functions. We are considering whether we require further guidelines on our information gathering powers generally and this will include a consideration of whether we require such guidelines for third parties.



## Representations from third parties

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint and who may have interests independent of the BBC (e.g. presenters, producers and/or independent programme-makers). Wherever possible, the BBC should seek to take account of and include the representations of such persons/bodies in its submissions in response to a complaint and confirm to Ofcom that it has done so.

However, such persons/bodies may make representations on their own behalf direct to Ofcom in respect of a complaint that Ofcom proceeds to investigate. In such a case, persons/bodies should seek to make representations to Ofcom as early in an investigation of a complaint as possible, setting out if/to what extent their representations differ from those of the BBC. Ofcom will as appropriate take those representations into account and include those persons/bodies in its decision-making process under these Procedures.

Note: Complainants are not generally third parties from whom Ofcom will seek representations as part of a standards investigation.

Details of Ofcom's live investigations are available in its Broadcasting and On Demand Bulletin at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>

## Preparation of Ofcom's Preliminary View

- 1.38 Ofcom will prepare its Preliminary View having taken account of the BBC's written representations, where provided. This Preliminary View is only provisional and may be subject to change in the light of subsequent representations/material provided by the BBC<sup>19</sup>: see paragraphs 1.40 and 1.41, below.
- 1.39 All draft Preliminary Views will be provided to a panel of Ofcom's Content Board members<sup>20</sup> for their advisory opinion. The decision on Ofcom's Preliminary View will be taken by a senior member of Ofcom's Executive with appropriate Board-delegated authority. Typically, this would be the person who is responsible for overseeing the investigation. The Preliminary View will contain:
- a summary of the complaint;
  - a summary of the material parts of the programme/broadcast to which the complaint relates;
  - a summary of the BBC's representations;
  - the particular provisions of the Broadcasting Code that Ofcom considers are relevant and applicable to the complaint; and

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<sup>19</sup> including any relevant third party (see "Representations from third parties" text box below).

<sup>20</sup> The Content Board is a committee of the main Ofcom Board established by the Communications Act 2003. It includes members with extensive broadcasting experience. See <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/content-board>

- Ofcom’s preliminary assessment of whether any breaches of those provisions have occurred and the reasons for that assessment.

- 1.40 If in any case Ofcom considers that it is necessary to obtain further information to ensure that it can fairly and properly prepare its Preliminary View, Ofcom may seek such information before preparing that view<sup>21</sup>.
- 1.41 When Ofcom has prepared its Preliminary View, Ofcom will provide it to the BBC (and any relevant third party) and request representations within 10 working days.
- 1.42 Ofcom considers that it will normally be able to reach a decision fairly and properly following written representations and without oral representations from the BBC. However, the BBC may, in any particular case, make a written request to make its representations orally to Ofcom in addition to any written representations. Ofcom will agree to such a request if Ofcom considers that an oral hearing is appropriate in view of the nature of the breach under consideration and the complexity of the issues raised<sup>22</sup>.

### **The final Decision**

- 1.43 Once Ofcom has received and considered the BBC’s representations (and/or any representations from a relevant third party) on its Preliminary View, it will reach its final decision.
- 1.44 All draft decisions will be provided to a panel of Ofcom’s Content Board members (who have not been involved in the investigation) for their advisory opinion before a final decision is taken. The final decision will be taken by a senior member of Ofcom’s executive with appropriate Board-delegated authority, who will not have been involved in the investigation and/or the preparation of the Preliminary View.

### **Publication of Decision**

- 1.45 Before publishing the Decision, Ofcom will provide the BBC, for information only with an embargoed copy of the Decision one working day before publication. The Decision will be published in Ofcom’s Broadcast and On Demand Bulletin on its website at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.

### **Non Disclosure**

- 1.46 It is an essential part of the integrity of Ofcom’s processes and its ability to regulate fairly that all parties concerned abide by Ofcom’s published rules and procedures, including those relating to non disclosure below.

#### **Non Disclosure**

Parties to a complaint (complainants, the BBC, Ofcom and any directly affected third parties) may, unless otherwise indicated, make public the fact that a complaint has been made or that Ofcom is investigating a case. They may also use any information which is already in the public domain.

<sup>21</sup> Under Article 47 of the BBC Charter, Ofcom may require the BBC and any other person to provide information for the purposes of the carrying out by Ofcom of their functions (see footnote 16).

<sup>22</sup> The final decision maker would chair any oral hearing

However, parties should not disclose any correspondence, documents or other material concerning the complaint during the course of the investigation<sup>23</sup>.

Failure to follow this requirement may result in Ofcom ceasing to consider the party's representations.

This does not limit what Ofcom can publish in its decision at the end of the investigation<sup>24</sup>.

## Time limits

1.47 Complainants and the BBC should keep to the time limits specified in these Procedures. However, Ofcom may consider it appropriate (in the interests of fairness and/or to carry out an investigation properly) to amend or adapt the time limits set out in the Procedures in a particular case. If a complainant or the BBC seeks an extension to a time limit, they should explain in writing to Ofcom why they believe it is appropriate.

## Sanctions

1.48 Where Ofcom decides there has been a breach (or breaches) of the standards set under section 319 of the 2003 Act and the BBC Charter and Agreement (as reflected in the provisions of the Broadcasting Code), Ofcom may determine that it justifies consideration of a sanction against the BBC. Ofcom will make such a determination clear in its Decision (under paragraphs 1.42 to 1.43, above) and the "Procedures for the consideration of sanctions in breaches of content standards on BBC broadcasting services and BBC on demand programme services" will then apply (detailed in Annex 3 of this document).

## Expedited process

1.49 In certain circumstances, Ofcom may expedite the process described above (as noted in paragraph 1.5). Examples of when this may occur include (but are not limited to):

- where Ofcom considers there is an ongoing risk of harm as a result of, for example, the participation of under-18s in an ongoing series;
- where Ofcom considers there is an ongoing risk of harm as a result of material on BBC ODPS remaining available for viewing on demand; and
- when concerns about due impartiality arise during an election or referendum period which require determining during that period.

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<sup>23</sup> Ofcom is obliged to meet various statutory obligations relating to the disclosure of information (for example, under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004). Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations.

<sup>24</sup> Ofcom may (in investigating and publishing its decision) withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the BBC will be notified that relevant material has been withheld and the reasons why.

- 1.50 Expedition may include Ofcom intervening at an earlier stage to handle and resolve a complaint that has not been resolved by the BBC<sup>25</sup>, allowing substantially less time to provide material and other information, and allowing substantially less time to provide any representations. Ofcom will make clear to the BBC the time limits for responses in such cases.

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<sup>25</sup> Such intervention is generally in exceptional circumstances, which may include (but is not limited to) Ofcom having concerns regarding incitement to crime, harm to minors, severe financial or physical harm, problematic issues of a systemic nature within the broadcasting industry that may affect the BBC, the involvement of under 18s in a programme or series, or whistleblower complaints related to broadcasting.