



Statement on procedures for enforcement of BBC competition requirements

Statement

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About this document

Under the BBC Charter and Agreement, regulation of the BBC's activities passed, on 3 April 2017, from the BBC Trust to Ofcom. As part of its new responsibilities, Ofcom must establish procedures which ensure the BBC's compliance with requirements set out in the Charter and the Agreement, including requirements in relation to competition which are enforceable by Ofcom.

On 23 January 2017, Ofcom published a consultation on proposed *Procedures for enforcement of BBC competition requirements*.

This document summarises the responses we received on our proposed Procedures, our responses to those comments, and amendments we have made to the Procedures as a result.

We are publishing alongside this document, the final version of the Procedures, which will come into effect on 28 June 2017.

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Section 1

Executive Summary

Introduction

- 1.1 On 15 December 2016, the Government published the new BBC Charter¹ and Agreement² setting out how the BBC will be governed and regulated over the next 11 years. Under the terms of the Charter and the Agreement, regulation of the BBC passed, on 3 April 2017, from the BBC Trust to Ofcom, and governance of the BBC passed to a new BBC Board.
- 1.2 In regulating the BBC, Ofcom must have regard to its general duties under the Communications Act 2003 and to the specific requirements of the Charter and Agreement. Under the Charter, Ofcom has a duty to have regard to the desirability of protecting fair and effective competition in the UK. We must also have regard to the object of the BBC to fulfil its Mission and promote the Public Purposes, and the requirement for the BBC to comply with its duties under the Charter.³
- 1.3 Ofcom must regulate the BBC in accordance with the terms of the Charter and the Agreement. As part of this, we have been developing a range of documents forming an Operating Framework containing the provisions we consider appropriate to secure the effective regulation of the BBC.⁴
- 1.4 Ofcom's regulation of the BBC will cover, amongst others, the impact of the BBC's activities on competition. Ofcom has set requirements as part of the Operating Framework to that effect.⁵ In addition, the BBC is also subject to certain competition-related requirements set out in the Agreement, some of which are enforceable by Ofcom. Together, we refer to the requirements in relation to competition which are enforceable by Ofcom as the "competition requirements".
- 1.5 Specifically, the competition requirements include:
 - requirements which Ofcom considers appropriate to protect fair and effective competition in relation to the UK Public Services. These may include provisions which relate to the distribution of the UK Public Services and/or requirements which relate to the commissioning of programmes or material to be included in the UK Public Services;⁶

¹ *The Royal Charter for the continuance of the British Broadcasting Corporation* (the "Charter") available at: <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

² *The Agreement between the Secretary of State for Culture, Media and Sport, and the BBC* (the "Agreement") available at: <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

³ Charter, Article 45(1), Article 45(2)

⁴ Charter, Article 46(2); Agreement, Clause 5(1)

⁵ Charter, Article 46(5), Article 46(6)

⁶ Agreement, Clause 15(4). The UK Public Services are defined in the Charter, Article 7(3) and the Agreement, Clause 7(1) and Schedule 1, Part 1.

- requirements which Ofcom considers appropriate to ensure that the BBC's commercial activities do not, as a result of their relationship with the UK Public Services, trading activities, or non-service activities, distort the market or gain an unfair competitive advantage;⁷
- requirements which Ofcom consider appropriate to protect fair and effective competition in relation to non-service activities and trading activities;⁸ and
- the requirement whereby, in relation to the UK Public Services, the BBC must ensure there is genuine competition between BBC producers and external producers (whether independent or not) on a fair, reasonable, non-discriminatory and transparent basis for the right to make relevant television, radio programmes and relevant online material, and that the BBC must evaluate any such bids on a fair, reasonable, non-discriminatory and transparent basis.⁹

Enforcement of competition requirements

- 1.6 In accordance with the Charter, Ofcom must enforce compliance by the BBC with the competition requirements.¹⁰
- 1.7 If Ofcom is satisfied that the BBC has breached a competition requirement, then we may:
- direct the BBC, or accept undertakings from the BBC, to take such steps we consider will remedy the failure to comply and/or ensure that the BBC complies with its requirements properly in future;¹¹ and/or
 - require the BBC to pay a specified penalty.¹²
- 1.8 In enforcing compliance by the BBC of the competition requirements, Ofcom may consider complaints, and we may carry out investigations into such compliance as we consider appropriate.¹³

Procedures for enforcement of competition requirements

- 1.9 The Charter and the Agreement state that Ofcom must set procedures for the handling and resolution of complaints, for conducting investigations and for the imposition of sanctions in relation to breaches of the competition requirements.¹⁴ These procedures will form part of the Operating Framework.

⁷ Agreement, Clause 28(1)

⁸ Agreement, Clause 22(2), Clause 31(3). Non-service activities are defined in the Charter, Article 7(5) and trading activities are defined in the Charter, Article 7(7).

⁹ Agreement, Schedule 3, paragraph 7(2)

¹⁰ Charter, Article 49(1)

¹¹ Charter, Article 49(2)

¹² Charter, Article 49(3). In accordance with Article 49(4) of the Charter, the amount of any penalty that may be imposed must not exceed the maximum specified in section 198(5) of the Communications Act 2003.

¹³ Charter, Article 49(1)

¹⁴ Charter, Article 49(6); Agreement, Clause 5(4), Clause 57(1), Clause 58(2)

- 1.10 As regards procedures for the handling and resolution of complaints, the Agreement provides that Ofcom must set and publish procedures which cover the handling and resolution of complaints which are referred to us in the following circumstances:
- if a complainant is not satisfied with the resolution of the complaint by the BBC;
 - if a complainant considers, following the resolution of a complaint by the BBC, that the imposition by Ofcom of a sanction against the BBC may be appropriate;
 - if the BBC has failed to resolve a complaint within the timeframe set in its complaints handling procedures;
 - where, in exceptional circumstances, we have intervened at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC.¹⁵
- 1.11 The Agreement provides that Ofcom's complaints handling procedures must give information on how complainants can expect to be treated. To this end, the procedures must ensure that making a complaint is straightforward and accessible, and that the public know about their right to make a complaint and how. In addition, the procedures must ensure that complaints are handled in a timely and proportionate manner, and considered and resolved effectively.¹⁶
- 1.12 In this regard, the Agreement states that Ofcom's procedures must clearly explain:
- how the complaints system works;
 - the remedies and sanctions Ofcom has the power to apply;
 - where relevant, the availability of other methods of redress in relation to the type of issues raised by the complainant; and
 - how complainants will be notified of the resolution of the complaint and provided with an explanation appropriate to the nature of the complaint.¹⁷
- 1.13 As regards investigations, the Agreement provides that Ofcom may carry out such investigations as we consider appropriate to determine compliance with a competition requirement, and that we must set and publish procedures for the carrying out of such investigations.¹⁸
- 1.14 As regards the imposition of sanctions, as set out in paragraph 1.7 above, the Charter sets out the sanctions that Ofcom may impose if we are satisfied that the BBC has failed to comply with a competition requirement. The Charter also provides that we may not impose these sanctions unless we have given the BBC a reasonable opportunity to make representations on Ofcom's grounds for imposing the sanctions.¹⁹

¹⁵ Agreement, Clause 57(1)

¹⁶ Agreement, Clause 57(4)

¹⁷ Agreement, Clause 57(4)

¹⁸ Agreement, Clause 58(1), Clause 58(2)

¹⁹ Charter, Article 49(5)

The consultation

- 1.15 On 23 January 2017, Ofcom published a consultation on its proposed *Procedures for enforcement of BBC competition requirements* (the “consultation”).
- 1.16 Ofcom received five responses to the consultation. These were from the BBC, ITV, Pact, Sky and UK Music.
- 1.17 We have considered all responses in finalising our Procedures and have published all non-confidential responses in full on our website.²⁰
- 1.18 Respondents made general comments regarding our approach to enforcing competition requirements on the BBC, as well as specific comments on the proposed Procedures. Overall, respondents agreed with Ofcom’s approach to enforcement of the competition requirements, but requested clarification about some aspects of the proposed Procedures, and proposed some amendments.

Next steps

- 1.19 In this statement, we summarise the responses to the consultation and set out our conclusions, including amendments we have made to the Procedures as a result.
- 1.20 In addition, we have made amendments to bring the Procedures in line with our *Enforcement Guidelines for regulatory investigations* (the “Enforcement Guidelines”)²¹ and *Procedures for investigating breaches of competition-related conditions in Broadcasting Act licences* (the “Broadcasting Act Procedures”)²², which we have published today. The rationale for these changes is set out in our Statement *Ofcom’s approach to enforcement: Revising the Enforcement Guidelines and related documents*,²³ which was also published today. We have also made a number of relatively minor stylistic amendments.
- 1.21 We have published our final Procedures alongside this statement. These Procedures form part of the Operating Framework for the BBC and take effect from 28 June 2017.

²⁰ www.ofcom.org.uk/consultations-and-statements/category-2/procedures-enforcement-bbc-competition-requirements

²¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf

²² https://www.ofcom.org.uk/_data/assets/pdf_file/0017/102518/Procedures-for-investigating-breaches-of-competition-related-conditions-in-Broadcasting-Act-licences.pdf

²³ https://www.ofcom.org.uk/_data/assets/pdf_file/0016/102517/Ofcoms-approach-to-enforcement.pdf

Section 2

Consultation responses and Ofcom's conclusions

- 2.1 Ofcom received five responses to the consultation. These were from the BBC, ITV, Pact, Sky and UK Music.
- 2.2 This section summarises the proposals to which respondents raised issues, a summary of those issues and Ofcom's responses, including changes we have made to the Procedures.
- 2.3 The final Procedures have been published today on our website.²⁴

Complaints and the 'BBC first' principle

'BBC first'

- 2.4 The Charter and Agreement provide for a 'BBC first' principle, which means a complaint should normally in the first instance be resolved by the BBC. If a complainant is not satisfied with the BBC's final response or considers the imposition by Ofcom of a sanction may be appropriate, or if the BBC has failed to respond within the timeframe set in its own procedures, a complainant may refer its complaint to Ofcom. However, in exceptional circumstances, Ofcom may intervene at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC.²⁵

Summary of comments

- 2.5 Pact welcomed Ofcom's recognition of the potential need for own-initiative investigations and to intervene early where necessary if a relevant complaint is not resolved by the BBC.
- 2.6 However, ITV raised concerns about the 'BBC first' principle. It said that it could not be right for Ofcom to suggest that it might not perform its role fully if stakeholders have not, regardless of reason, engaged on a particular issue with an organisation that might be its closest commercial rival or key customer. ITV considered that there might be good commercial or relationship reasons why it would not be comfortable taking up certain issues with the BBC instead of Ofcom, or there might be circumstances where objections could only be evidenced with commercially sensitive information.

Ofcom response

- 2.7 In response, we note that, as explained above, the Charter and Agreement provide for a 'BBC first' principle and specify that Ofcom may deal with complaints in the first instance in exceptional circumstances. Ofcom is required to follow this process and we consider it is appropriate for us to reflect this in our Procedures.

²⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0010/102520/Procedures-for-enforcement-of-BBC-competition-requirements.pdf

²⁵ Charter, Article 56(3); Agreement, Clause 57(1), Clause 57(2)

- 2.8 However, Ofcom acknowledges that some stakeholders, and competitors of the BBC, may not wish to refer their complaint to the BBC for commercial or other related reasons. In recognition of this, Ofcom stated in the proposed Procedures, that if a complainant has not referred its complaint to the BBC in the first instance it should set out in its complaint submission why it considers there are exceptional circumstances for it not doing so. This wording has been retained in the final Procedures. We will then consider, on a case-by-case basis, based on the complainant's submissions and all the circumstances of the case, whether it is appropriate for us to handle the complaint, and have clarified this in the final Procedures.

Timeframe for making a complaint

- 2.9 The Agreement requires our procedures to provide for the consideration of complaints where the BBC has failed to resolve a matter within the time period set in its own complaints handling procedures.²⁶ This time period was referred to in the proposed Procedures as the "BBC deadline".

Summary of comments

- 2.10 In response to the consultation, the BBC explained that the timescales in its complaints handling procedures are indicative and that a complainant would be notified of the expected timeframe for their complaint. The BBC suggested that Ofcom adopt less restrictive wording and that Ofcom set the operation of its time limit by reference to where the BBC has failed to respond within the target date set in accordance with its own procedures.

Ofcom response

- 2.11 Ofcom accepts that there will, in some circumstances, be investigations which take longer than the planned timescales and it would not be in Ofcom's, the BBC's or the complainant's interests for us to begin an investigation afresh where this is the case. However, it is an important aspect of the 'BBC first' principle that complainants can refer their complaint to Ofcom if it has not been resolved or concluded within a set period. Ofcom has retained in the final Procedures the two-month window for referring a complaint to Ofcom following the BBC's stated deadline.

How Ofcom decides whether to investigate

Summary of comments

- 2.12 ITV noted that Ofcom will take into account resource implications when deciding whether to open an investigation. It considered Ofcom should not ignore genuine grounds for concern over a breach of a competition requirement by the BBC because Ofcom staff were committed elsewhere at the time. ITV asked Ofcom to clarify that the availability of resource may impact the timing of an investigation, but not a decision to initiate one. Pact also considered that Ofcom should ensure that it is not prevented from investigating vital regulatory issues because of resource constraints.
- 2.13 ITV also noted that Ofcom will take into account the strategic significance of the alleged conduct when deciding whether to open an investigation. ITV considered that Ofcom should not ignore genuine grounds for concern over the BBC's compliance

²⁶ Agreement, Clause 57(1)(iii)

with a competition requirement simply because the specific competition issue did not relate to one of Ofcom's strategic goals or priorities.

- 2.14 Pact agreed that Ofcom should make decisions on whether to open investigations on a case-by-case basis. However, Pact said it is important that Ofcom's criteria for opening an investigation is applied in a way which allows Ofcom to take account of the risk to, and impact on, individual businesses (or groups of businesses), and Pact considered that Ofcom should clarify this.

Ofcom response

- 2.15 Ofcom does not have unlimited resources and cannot necessarily investigate every matter which comes to our attention. Ofcom makes decisions about whether or not to open an investigation, including an investigation into the BBC, by weighing up the likely benefits of conducting an investigation compared to the resources that would be required, and the comparative benefits of using these resources in other ways.
- 2.16 In the proposed Procedures, we set out a non-exhaustive list of the factors which we normally have regard to when considering whether or not to open an investigation. These factors apply not only to enforcement of BBC competition requirements but also to the full range of enforcement action covered by the Enforcement Guidelines, investigations into breaches of competition-related conditions in Broadcasting Act licences, and Competition Act investigations. They are designed to be wide-ranging and flexible, and we will apply them so far as they are relevant to the particular case concerned. As stated in the proposed Procedures, we will also take into account any other relevant matters when deciding whether to investigate.
- 2.17 We therefore consider that the wording in the Procedures is sufficiently broad to encompass considerations such as the risk to, and impact on, individual businesses, or groups of businesses, and the range of specific competition issues which could arise out of the BBC's non-compliance with a competition requirement. We therefore do not consider it necessary to make any amendments to the proposed Procedures in this regard.
- 2.18 We also note that Ofcom has discretion under the Charter and the Agreement to decide whether or not to carry out an investigation into the BBC to enforce compliance with a competition requirement. The Charter and Agreement recognise that it might not be appropriate for Ofcom to open an investigation into the BBC in all circumstances, and that other methods of redress might be a more suitable way of ensuring the BBC complies with its regulatory obligations.²⁷

Other methods of redress

Summary of comments

- 2.19 Pact agreed with Ofcom's proposal that it may resolve complaints informally. However, Pact requested more clarity on what would constitute 'assurances' from the BBC sufficient to address Ofcom's concerns without the need for an investigation. It also asked for transparency on the informal assurances process and for confirmation from Ofcom that we will take steps to ensure that assurances are delivered.

Ofcom response

²⁷ Charter, Article 49(1)(b); Agreement, Clause 58(1)

- 2.20 It is always open to those we are investigating, including the BBC, to approach us about the possibility of resolving issues informally, for example by taking, or giving assurances that they will take, steps to ensure they bring themselves into compliance and remedy the consequences of a contravention.
- 2.21 We expect contraventions of the competition requirements to vary in nature, scope and complexity, and we would therefore decide whether assurances, and what type of assurances, would be appropriate on a case-by-case basis. We do not consider it helpful to set out in the Procedures the type of assurances we might accept in a particular case, and have retained the wording in the final Procedures in this regard.
- 2.22 In relation to process, as stated in the proposed Procedures, should we consider the assurances to be appropriate in the circumstances, we would write to the complainant and the BBC explaining the basis on which we have decided not to proceed to formal enforcement action. In line with the Enforcement Guidelines and the Broadcasting Act Procedures, we have also included in the final Procedures, some additional guidance on the process we would expect to follow. We have also explained that we would expect to monitor compliance with any assurances given by the BBC, and how we might proceed if assurances were not carried out.

Dealing with cases urgently

Summary of comments

- 2.23 The BBC considered that it would be more proportionate and consistent with the interim measures process under the Competition Act 1998 if we provided that we would deal with cases urgently where the risk of harm is not just significant but also irreversible, unless action is taken immediately.

Ofcom response

- 2.24 Ofcom considers it appropriate to deal with cases urgently where there is a risk of “serious” harm, irrespective of whether or not this harm is irreversible. This is consistent with the statutory tests Ofcom must meet before taking urgent action under the Competition Act 1998, the Communications Act 2003 and Postal Services Act 2011.²⁸

Engagement with the BBC

Early engagement

Summary of comments

- 2.25 The BBC considered Ofcom’s process should provide a clear opportunity for it to engage with Ofcom prior to a provisional breach notice being issued. It considered the informal resolution process should be expanded to set out how this might be facilitated by allowing the BBC to have sight of the complaint or of Ofcom’s rationale for opening an investigation at a relatively early stage. This would allow the BBC,

²⁸ Section 35 of the Competition Act 1998 provides that Ofcom may impose interim measures for the purpose of “preventing significant damage” to persons or of protecting the public interest. Under the Communications Act 2003 and the Postal Services Act 2011, Ofcom may take urgent action where we have reasonable grounds to believe that the contravention has resulted in, or creates an immediate risk of, either a “serious threat” to public health, public safety or national security or “serious economic or operational problems” for specified persons.

where possible, to engage constructively on resolving the issue at an early stage or at least correcting any material errors of fact. The BBC considered that the possibility of early resolution should be highlighted as one of the ways in which Ofcom will give the BBC a fair opportunity to make representations to, and engage with, Ofcom during the course of an investigation.

Ofcom response

- 2.26 In line with the Enforcement Guidelines and the Broadcasting Act Procedures, we have set out in the final Procedures how we would usually expect to carry out an initial assessment phase before deciding whether to open an investigation.
- 2.27 We explain in the final Procedures that during the initial assessment we would normally provide the BBC with the opportunity to comment on the relevant issues and on the complaint submission, and to provide information to assist us in deciding whether to open an investigation. The final Procedures also explain that Ofcom may accept informal assurances from the BBC instead of proceeding to formal enforcement action, and we have amended the Procedures to provide further clarity as to how Ofcom would expect to engage with the BBC about key issues during an investigation.
- 2.28 We therefore consider that the process provides a clear opportunity for the BBC to understand the key issues raised, engage with Ofcom about these issues and explore the opportunity for informal resolution, at an early stage and prior to the provisional breach notice being issued.

State of play meetings

Summary of comments

- 2.29 The BBC considered there should be regular ‘state of play’ meetings in longer, more complex investigations to ensure that any opportunities for early and effective resolution are taken in the interests of all parties.

Ofcom response

- 2.30 We will always endeavour to engage constructively with the BBC during the progress of an investigation, however, we do not consider it is helpful to commit to holding ‘state of play’ meetings at fixed points in an investigation. Whether it would be beneficial to Ofcom and the BBC to meet will depend on a number of considerations, including the nature of the investigation and the stage that we have reached in our analysis.
- 2.31 We have explained in the final Procedures that we will be prepared to meet with the BBC (and complainants or other third parties) where we consider it to be appropriate to do so for reasons of fairness and transparency, in line with the approach we have taken in the Enforcement Guidelines and Broadcasting Act Procedures.

Deadline for written representations on the provisional breach notification

Summary of comments

- 2.32 The BBC considered that it should be given the opportunity to discuss with Ofcom a reasonable timeframe for it to make representations on the provisional breach notification.

Ofcom response

- 2.33 Ofcom is required under the Charter to provide the BBC with a reasonable opportunity to make representations on the provisional breach notification.²⁹ When setting the deadline for written representations on the provisional breach notification, we will ensure that the timeframe is reasonable taking in account the circumstances and complexity of the case. We explained this in the proposed Procedures, and consider it is appropriate to retain this wording in our final Procedures.
- 2.34 In practice, we would expect to set out the deadline for written representations in the provisional breach notification, and would consider any requests for extensions of time on a case-by-case basis.

Timescales

Summary of comments

- 2.35 The BBC considered it would be reasonable for Ofcom to give a commitment to aim to complete investigations as quickly as possible. The BBC suggested that Ofcom should generally inform the BBC of the expected length of an investigation and should include a commitment in the Procedures to set target dates for key stages once the investigation has been opened, and communicate these to the BBC and the complainant.
- 2.36 Pact considered Ofcom should put a timeframe on the length of time Ofcom will have to consider complaints.

Ofcom response

- 2.37 Ofcom recognises that it is important that we complete investigations as soon as reasonably possible and handle complaints in a timely way.
- 2.38 We expect that the issues raised by complaints, and investigations into the BBC's compliance with competition requirements, will vary in nature and complexity. This will mean that we may be able to assess some complaints and conduct some investigations more quickly, whereas others may take longer. We consider it is appropriate to set timescales for assessing complaints and conducting investigations on a case-by-case basis, and have explained this in the Procedures.
- 2.39 As regards our initial assessment of a complaint, we have explained in the final Procedures that we will aim to complete this assessment as quickly as possible but this is likely to vary on a case-by-case basis depending on the issues under consideration. We also explain that where we provide the BBC with an opportunity to comment and provide information during our initial assessment phase, we would write to it and any complainant setting out when we aim to have taken our decision on whether to open an investigation.
- 2.40 We also explain in the final Procedures that we will give the BBC and any complainant an indication of the likely timescale involved in completing an

²⁹ Charter, Article 49(5)

investigation and provide them with updates on the progress of investigations, including when we expect to reach a specific milestone. We also explain that will aim to publish on our website details of how long we expect to take to complete key milestones in an investigation.

Changing the scope of an investigation

Summary of comments

- 2.41 The BBC considered that Ofcom should provide greater detail as to when it would consider it reasonable to widen the scope of an investigation.

Ofcom response

- 2.42 Ofcom will consider whether to widen the scope of an investigation on a case-by-case basis; for example, we may obtain new information which we consider reveals an additional issue we should pursue or narrows the focus of our investigation onto particular issues. We have retained wording in this regard in the final Procedures, in line with the approach we have taken in the Enforcement Guidelines and Broadcasting Act Procedures.
- 2.43 Also in line with the approach we have taken in the Enforcement Guidelines and Broadcasting Act Procedures, we have explained in the final Procedures that we would give the BBC and/ or the complainant the opportunity to comment on proposed changes to the scope of the investigation where we consider it to be necessary for reasons of fairness. This might be, for example, if we were minded to widen the scope of the investigation on the basis of new evidence on which the BBC has not been given the opportunity to comment. However, this would not be our routine practice.

Involvement of the complainant and third parties

Summary of comments

- 2.44 The BBC was concerned with our proposals to disclose the provisional breach notification to other stakeholders. It considered that this runs the risk that highly prejudicial information and analysis which the BBC might not have had the opportunity to review or challenge would be shared with third parties, and possible competitors. The BBC considered that information could be gathered more fairly and proportionately from third parties by using Ofcom's formal information gathering powers.
- 2.45 Pact and Sky considered that the Procedures should make appropriate provision for the involvement of complainants and third parties, as follows:
- Sky considered complainants should be given the opportunity to comment where Ofcom proposed to depart from the Procedures.
 - Sky also said that complainants should be involved where Ofcom resolves an issue through other methods of redress.
 - Sky considered that if Ofcom decides not to open an investigation, or to close a case, then the complainant should be given a reasoned decision.

- Pact considered that complainants, in addition to third parties, should be given the opportunity to comment on the provisional breach notification.
- Pact and Sky considered that it may be appropriate for complainants and third parties to have an oral hearing.

Ofcom response

- 2.46 Ofcom recognises that complainants and third parties may be directly affected by the outcome of an investigation. They can also play a valuable role by drawing issues to our attention and by providing us with relevant information during the course of an investigation. Although we will involve complainants and third parties in an investigation to the extent we consider it appropriate to carry out our functions fairly, transparently and effectively, we do not consider it helpful to seek to specify in detail exactly how much involvement complainants and third parties can expect in an investigation. This is because what is required for fairness and transparency will vary from case to case, depending on the nature of the investigation and the circumstances of the complainant or third party. However, we have sought to provide clarity in the Procedures about the type of involvement that complainants and third parties can typically expect in an investigation.
- 2.47 As regards the BBC's concerns about providing the provisional breach notification to third parties for comment, we remain of the view that this might be appropriate in some circumstances. However, we have clarified in the final Procedures, in line with the Enforcement Guidelines and the Broadcasting Act Procedures, circumstances in which we would typically expect to do this. We expect that this may be where the third party has further information relevant to the proposed decision. Another example may be where Ofcom's provisional findings could have a direct impact on its economic interests. In practice, we do not expect to do this as a matter of course and would ensure that any confidential information is redacted before disclosing the provisional breach notification to the complainant or third party.