

Ofcom procedures for the handling of appeals of ATVOD decisions in relation to what constitutes an “On Demand Programme Service”

1. Time Limits

Currently the consultation does not place any time limits on Ofcom providing a decision to an appeal. The time limits in paragraphs 40-44 in the “Procedures for handling of broadcast standards or other licence-related cases” would provide a useful time line for appeal decisions to be reached.

2. Appeal

The decision of Ofcom is stated to be final. There should be reference to the supervisory jurisdiction of the Administrative Court, which has jurisdiction over bodies exercising a public law function including decisions of regulatory bodies such as Ofcom.

Reference should also be made to either Ofcom’s or the Administrative Court’s ability to submit questions on the interpretation of European Union law to the European Court of Justice for preliminary ruling.

It remains a possibility that any ATVOD and Ofcom decisions based on the most current “Application and Scope of the Regulations for Video On Demand (VOD) services” published by ATVOD may in some circumstances be in breach of European Union law and the United Kingdom’s duty to allow free movement of services within the Internal Market pursuant to Article 56 of the Treaty on the Functioning of the European Union (TFEU)