



Payment of costs and expenses in regulatory disputes

Guidance on Ofcom's approach

Consultation

Publication date: 29 October 2012

Closing Date for Responses: 10 December 2012

Contents

Section		Page
1	Summary	1
2	Introduction and background	3
3	Proposed approach to costs in disputes	6
Annex		Page
1	Responding to this consultation	7
2	Ofcom's consultation principles	14
3	Consultation response cover sheet	15

Section 1

Summary

Purpose of this document

- 1.1 Ofcom's powers under the Communications Act 2003 ("the 2003 Act") relating to the recovery of costs and expenses arising from regulatory disputes were amended by the Electronic Communications and Wireless Telegraphy Regulations 2011 ("the Regulations").¹ Ofcom now has revised powers under section 190 of the 2003 Act to recover the costs and expenses that it incurs itself in dealing with the dispute. It also has revised powers to require a party to a dispute to make payments to another party to the dispute in respect of costs and expenses which that other party has incurred.²
- 1.2 On 7 June 2011, following consultation, we issued revised guidelines for the handling of disputes ("Dispute Resolution Guidelines")³ in which we said that we would provide separate guidance regarding costs and expenses.
- 1.3 This consultation document sets out Ofcom's proposed approach to:
 - 1.3.1 recovering its own costs and expenses incurred when making a determination for resolving a dispute pursuant to sections 185-191 of the 2003 Act; and
 - 1.3.2 requiring payment of another party's costs and expenses incurred in connection with a dispute.
- 1.4 The proposed approach set out in this document applies only to disputes within the meaning of section 185(1), 185(1A) and 185(2) of the 2003 Act. It does not apply to disputes brought under the Postal Services Act 2011.
- 1.5 Section 2 of this document explains the scope of Ofcom's revised powers, and the rationale for seeking cost recovery.
- 1.6 Section 3 of this document sets out:
 - 1.6.1 the types of disputes in respect of which Ofcom may consider cost recovery;
 - 1.6.2 the factors that Ofcom will take into account when deciding whether to recover its own costs and expenses and/or require payment of another party's costs; and
 - 1.6.3 the methodology and process that will be used to calculate amounts to be recovered/paid.

¹ SI 2011/1210.

² In this document, the term "dispute" or "regulatory dispute" means a dispute within the meaning of these sections unless expressly stated otherwise.

³ Dispute Resolution Guidelines (7 June 2011) (available on Ofcom's website at <http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf>).

- 1.7 We welcome comments on this consultation by 10 December 2012. Please see Annex 1 below for details of how to respond.
- 1.8 It is our intention to publish guidance in winter 2012/13 after we have considered any comments received. This guidance will not have binding legal effect. However, where we depart from the approach set out in guidance, we will explain why.⁴

Summary of our proposed approach to costs in disputes

- 1.9 In general we would expect the current practice, under which both Ofcom and the disputing parties bear their own costs, to continue for the majority of disputes that Ofcom resolves. It is not our intention routinely to recover Ofcom's costs of disputes or to require costs payments to disputing parties.
- 1.10 We will, if appropriate, consider whether any party's costs should be paid on a case-by-case basis. However, it is not possible to identify in advance all cases in which we will decide that costs should be recovered, and Ofcom cannot fetter its discretion in this regard. The proposed approach, including the factors discussed in Section 3 of this document, should therefore be read as a general guide, and are subject to the specific facts and circumstances of each individual case.

⁴ We will have due regard to published guidance when exercising our discretionary power, but may depart from it where appropriate.

Section 2

Introduction and background

Ofcom's powers relating to costs in disputes

2.1 Sections 185-191 of the 2003 Act, as amended by the Regulations, set out Ofcom's duties and powers in resolving regulatory disputes.

2.2 Section 190(6) of the 2003 Act provides that:

Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute—

(a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and

(b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute;

and may determine the amount of the costs and when the costs are to be paid.

2.3 Section 190(6A) of the 2003 Act provides that:

OFCOM may not, under subsection (6)(a), require a party to the dispute to make payments to another party unless OFCOM have considered:

(a) the conduct of the party before and after the reference to Ofcom (including, in particular, whether any attempt has been made to resolve the dispute), and

(b) whether OFCOM has made a decision in the party's favour in respect of the whole or a part of the dispute.

2.4 Section 190(6B) of the 2003 Act provides that:

OFCOM may not, under subsection (6)(b), require payments to be made to them by a party to the dispute unless:

(a) the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum; or

(b) they have considered the matter referred to in subsection (6A)(a) and (b).

2.5 Before the 2003 Act was amended by the Regulations, Ofcom could require a party to make payments to another party only where:

2.5.1 the dispute related to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum; or

- 2.5.2 it appeared to Ofcom that the dispute reference by a party was frivolous or vexatious or that a party had abused the right of reference conferred by the 2003 Act.⁵
- 2.6 This restriction has now been removed. A restriction similar to that set out in Paragraph 2.5.2 continues to apply to postal disputes referred to Ofcom and accepted for resolution under the Postal Services Act 2011. Such disputes are not affected by the matters set out in this document.

The rationale for cost recovery

- 2.7 Ofcom and other parties will inevitably incur both direct and indirect costs and expenses when dealing with disputes. Ofcom has seen an increase in the number of disputes referred to us for resolution in recent years. In addition, the complexity and level of resource required to resolve these disputes has also been increasing. This has implications not only for the costs arising from Ofcom's dispute resolution functions but also for the resources available for other discretionary activities.⁶
- 2.8 To date, Ofcom's dispute resolution function costs (excluding spectrum disputes) have been met by Ofcom's general funding and, therefore, indirectly by all those companies that pay Ofcom's administrative charges. We recognise that this situation may not always provide the right incentives for parties that are considering whether to refer disputes to Ofcom under the 2003 Act.
- 2.9 In its 15 April 2011 statement accompanying the Regulations,⁷ the Department for Culture, Media and Sport ("DCMS") explained the basis for its decision to revise Ofcom's powers to recover its own costs in disputes.
- 2.10 DCMS noted that the revised provisions were intended "...to encourage the use of alternative mechanisms for resolving disputes where appropriate, which can be both more cost effective and less bureaucratic than the current dispute resolution process".⁸ In the remainder of this document we refer to such alternative mechanisms, including arbitration, mediation and expert determination, collectively as "ADR".⁹
- 2.11 DCMS made clear that Ofcom would "...only normally recover costs and expenses from disputing parties, where appropriate, in cases where ADR, where available, had

⁵ Section 190(7) 2003 Act (now omitted). Ofcom never exercised the powers conferred by this section.

⁶ For example, the resources available to Ofcom to conduct investigations under the Competition Act 1998.

⁷ See *Implementing the revised EU Electronic Communications Framework: HMG response to its consultation on proposals and overall approach including its consultation on specific issues* (April 2011) ("DCMS Statement")

http://www.culture.gov.uk/images/publications/FWR_implementation_Governmentresponse.pdf

⁸ DCMS Statement, paragraph 92.

⁹ There are a number of institutions and organisations currently offering a wide range of ADR services, such as the Centre for Effective Dispute Resolution (see <http://www.cedr.com/>) and the Chartered Institute of Arbitrators (see <http://www.ciarb.org/>). These serve as examples only and Ofcom expresses no view as to whether any institution's services would be more suitable than another's or generally suitable in all cases of disputes referred to Ofcom. Reference to these institutions is included only to illustrate that several types of ADR are generally available to resolve disputes.

not been pursued' and that this power to require payment of costs should not impact on the ability of undertakings to seek resolution of disputes through Ofcom.¹⁰

- 2.12 We share the Government's desire to see greater use of alternative means, such as commercial negotiation and ADR, to resolve disputes in appropriate cases. However, we agree that provision for the recovery of costs and expenses should not operate in a manner that might unduly discourage parties from referring disputes for resolution.
- 2.13 As noted in the Dispute Resolution Guidelines, we consider that, to date, some parties may not have fully explored all possible alternative means of addressing the issues of disagreement before submitting a dispute to Ofcom for resolution. Whilst we accept that ADR may not be practical or appropriate as a means of dealing with all types of disputes, we would like to see more attempts to resolve matters in this way. In particular, we wish to incentivise parties (i) to consider actively whether issues in dispute might best be resolved via alternative means; (ii) to engage genuinely and constructively in commercial negotiations or ADR; and (iii) where disputes ultimately do fall to Ofcom for resolution, to behave in a manner that enables them to be handled as efficiently and economically as possible.

¹⁰ DCMS Statement, paragraph 93.

Section 3

Proposed approach to costs in disputes

- 3.1 In this section, we set out:
- 3.1.1 the types of disputes for which Ofcom considers it may be appropriate to recover its own costs or require another party's costs to be paid;
 - 3.1.2 the factors that Ofcom will take into account in deciding whether to recover its own costs and expenses, and/or require another party's costs to be paid; and
 - 3.1.3 the methodology that will be used when calculating any relevant cost amounts.
- 3.2 As noted above, it is not possible to identify in advance all cases in which we will decide that costs should be recovered or paid. In principle, we may seek to recover our costs, or require another party's costs to be paid, in connection with any dispute that we handle. However, it is not our intention routinely to do so and in practice we expect to do so only occasionally.
- 3.3 We will make decisions on costs on a case-by-case basis, having regard to the specific characteristics and history of each dispute, and the factors discussed at paragraphs 3.8-3.23 below.

Types of disputes

- 3.4 The types of disputes that Ofcom may be asked to resolve pursuant to sections 185-191 of the 2003 Act can be divided, broadly, into two categories:
- 3.4.1 Disputes that fall within section 185(1A) or (2) of the 2003 Act, which are "mandatory" disputes that Ofcom has a duty to resolve unless it considers that the requirements of section 186(3) are met.¹¹ Such disputes must relate to existing obligations imposed on undertakings under section 45 of the 2003 Act.
 - 3.4.2 Disputes that fall within section 185(1) of the 2003 Act, which are "discretionary" disputes in the sense Ofcom may choose whether or not to handle them. In exercising that discretion, Ofcom may in particular take into account its priorities and available resources at the time (see section 186(2A) of the 2003 Act).
- 3.5 In both cases, Ofcom may seek to recover its own costs and/or require another party's costs to be paid.

¹¹ Section 186(3) requires Ofcom to decide that it is appropriate for them to handle a dispute unless they consider that (i) there are alternative means to resolve the dispute, (ii) that a resolution of the dispute by those means would be consistent with the Community requirements set out in section 4 of the 2003 Act, and (iii) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it.

Factors relevant to the recovery of Ofcom's costs and requiring the payment of another party's costs

- 3.6 In accordance with section 190(6A) and 190(6B) of the 2003 Act, before requiring a party to a dispute either to pay Ofcom's costs, or another party's costs, we must consider:
- 3.6.1 the conduct of the parties before and after the reference of the dispute to Ofcom, including in particular whether any attempt has been made to resolve the dispute; and
 - 3.6.2 whether Ofcom's determination of the dispute (in whole or in part) supports or rejects the position advocated for by the party from whom costs are being recovered.
- 3.7 Paragraphs 3.8-3.23 below elaborate the factors to which Ofcom is likely to have regard to when doing so. We may also take account of other factors where we consider it appropriate to do so.

Commitment to negotiations/ADR

- 3.8 Some companies may decline to attempt to resolve disputes using commercial negotiations or ADR, use delaying or stalling tactics in ongoing negotiations or otherwise obstruct the proper course of negotiations.¹² In the normal course of events, we expect parties to have (i) attempted to resolve a dispute via commercial negotiations before referring it to Ofcom; (ii) actively considered whether a dispute could be resolved via ADR before referring it to Ofcom; and (iii) when engaging in negotiations or ADR, to have behaved reasonably, constructively and in a manner that demonstrates a genuine commitment to the resolution of the dispute.
- 3.9 Ofcom is more likely to require a party to pay Ofcom's costs and/or another party's costs, where that party failed properly to act in a manner consistent with the factors set out in paragraph 3.8 above. Ofcom will place particular weight on evidence (or lack thereof) of a genuine effort to resolve a dispute before referring it to Ofcom.

Behaviour that increases costs and expenses

- 3.10 When deciding whether to require a party to pay Ofcom's costs and/or another party's costs, we will also consider whether that party's behaviour after the dispute was referred to Ofcom may have caused the costs and expenses incurred by Ofcom or other parties to increase.

Accuracy of information provided

- 3.11 Ofcom is more likely to require a party to pay Ofcom's costs and/or another party's costs where that party has provided inaccurate or incomplete information to:
- 3.11.1 another party in the context of commercial negotiations or ADR; and/or
 - 3.11.2 Ofcom when responding to either formal or informal requests for information made to that party after the reference of the dispute to Ofcom.

¹² Dispute Resolution Guidelines, paragraph 4.7

- 3.12 In having regard to this factor, Ofcom will consider the nature and extent of the inaccuracy or gap in the information provided, whether there is a reasonable explanation for this (for example, any reasonable difference of understanding as to the scope of information sought), and the impact of the inaccuracy or gap in information provided on Ofcom's deadlines and analysis, or on other parties to a dispute.
- 3.13 Ofcom usually requests information from the parties to a dispute or any other person who it appears may have relevant information, using powers set out in section 191 of the 2003 Act. It is an offence for a person to fail to provide information or to provide false information in response to a request made pursuant to section 191.¹³ Where Ofcom intends to bring proceedings against a party in connection with a breach of these information requirements, we may also require that party to pay Ofcom's costs and/or another party's costs in relation to that dispute.

Compliance with Ofcom's deadlines

- 3.14 In deciding whether to require a party to pay Ofcom's costs and/or another party's costs, Ofcom may take into account in any failure by that party to comply with deadlines set by Ofcom for making submissions or providing information.
- 3.15 In having regard to this factor, we will consider (i) the nature of the deadlines set; (ii) the duration of any delay in meeting a deadline; (iii) whether a party has previously made a reasoned request for extension to a deadline; and (iv) the impact of the delay on Ofcom or other parties to the dispute.

Other considerations

- 3.16 Other considerations may be relevant, for example, where a party makes multiple submissions that duplicate arguments or evidence, and where Ofcom or other parties are required to engage with and respond to each of these submissions individually. Similarly, Ofcom may also take into account whether a party has made unsolicited submissions at a late stage of the dispute resolution process, where these submissions require significant consideration and assessment and raise issues which are substantially rejected by Ofcom.

The nature and value of the issues in dispute

- 3.17 In performing its dispute resolution functions, Ofcom must have regard to its statutory duties, and in particular its duties under sections 3 and 4 of the 2003 Act. Some disputes raise issues that go to the heart of these duties by, for example, directly affecting the interests of consumers or competition. In contrast, some disputes raise issues that are primarily commercial in nature, affecting only the parties to the dispute.
- 3.18 As a general rule, Ofcom is more likely to require a party to pay Ofcom's costs and/or another party's costs where a dispute is primarily commercial in nature as between the parties to the dispute, and does not raise any issues that materially affect the interests of:

- 3.18.1 citizens in relation to communications markets;

¹³ Sections 144, 191(5) 2003 Act

3.18.2 consumers in relevant markets; or

3.18.3 the promotion of competition.

3.19 Ofcom will also have regard to the financial value of the matters in dispute. Ofcom will be more likely to require a party to pay Ofcom's costs and/or another party's costs where the financial value of the matters in dispute is less than £50,000. In these circumstances, the combined costs incurred by Ofcom and other parties in connection with the dispute will almost certainly exceed the value of any payment that might be ordered between the parties.

3.20 Ofcom however recognises that disputes of relatively small value may raise important issues that do have a material impact upon consumers. Accordingly, we will take this factor into consideration alongside other relevant considerations, depending on the specific facts and circumstances of each case.

Outcome of the dispute resolution process

3.21 When deciding whether to require a party to pay Ofcom's costs and/or another party's costs, Ofcom will also consider whether a party has "succeeded" in its claims or not been successful, in the sense that Ofcom has substantially accepted submissions made by a party and accordingly made a determination in their favour.

3.22 As above, this factor will be taken into account in the round with any other relevant factors. As general rule, Ofcom would expect not to require a party to a dispute to pay anyone's costs unless a number of the factors set out in this document that tend in favour of requiring such payments are present.

Summary

3.23 Table 1 below summarises the approach that Ofcom will typically take when deciding whether to recover costs and expenses from hypothetical Party A.

Table 1: Summary of relevant factors

Relevant factor	Consideration
Commitment to negotiations/ADR	Has Party A's behaviour caused the failure of commercial negotiations/ADR?
	Does this behaviour by Party A indicate a clear absence of genuine effort to resolve a dispute?
	Is the behaviour by Party A that has caused failure objectively justified?
Conduct that increases costs expenses	Has Party A provided inaccurate information? Has the provision of this information caused delay or increased cost to Ofcom or other parties?
	Has Party A failed, without reasonable excuse, to comply with deadlines set by Ofcom? If so, has it caused delay or increased cost to Ofcom or other parties?
	Has Party A supplied multiple, duplicative submissions. If so, has this caused delay or increased cost to Ofcom or other parties?
<i>Additional relevant considerations if the above factors indicate that costs and</i>	

<i>expenses should be sought</i>	
Nature and value of issues in dispute	Does the dispute referred by Party A raise issues that materially affect the interests of: (i) citizens in relation to communications markets; (ii) consumers in relevant markets; or (iii) promoting competition, or otherwise affect matters related to Ofcom's statutory duties?
Outcome of the dispute resolution process	Has Ofcom made a determination in favour of Party A?

Methodology and process for calculating costs and expenses to be recovered

- 3.24 As set out above, Ofcom is required to take into account a party's conduct both before and after the reference of the dispute to Ofcom. Accordingly, we cannot decide whether recovery of costs and expenses may be appropriate until after the resolution of a dispute (i.e. after a final determination has been made).
- 3.25 Where two or more parties are in similar positions, we may decide to apportion costs between them as appropriate.

Ofcom's costs and expenses

- 3.26 We will apply the factors set out above in deciding whether it is appropriate for Ofcom to require a party to pay Ofcom's costs and expenses incurred in resolving a dispute. In doing so, we will:
- 3.26.1 indicate to all parties whether we are "minded to" to recover Ofcom's costs and expenses from a party to a dispute as soon as possible and usually within 4 weeks after issuing a final determination;
 - 3.26.2 without undertaking a detailed cost assessment, indicate a high level estimate of the costs and expenses Ofcom has incurred in resolving the dispute in question;
 - 3.26.3 if we are seeking to recover those costs from more than one party indicate our view of the appropriate split between each party in light of the factors set out above as they apply to each individual party;
 - 3.26.4 ensure that this high level estimate will have regard to the nature and value of the issues in dispute, and whether Ofcom's determination represents a "win" or "loss" for the party (i.e. does Ofcom's determination of the dispute materially support or reject the position for which that party advocated);
 - 3.26.5 give the party (or parties) subject to the costs order an appropriate period of typically up to 2 weeks, to agree the level of Ofcom's costs to be paid. If agreement can be reached then the decision will become final and the party will have a further 14 days to make full payment;
 - 3.26.6 where agreement cannot be reached, then at the expense of the party (or parties) subject to the costs order, Ofcom will refer its costs to be assessed by an independent third party costs assessor (chosen at the sole discretion of Ofcom). Such costs may include any costs Ofcom incurs in putting

together its costs assessment for the third party assessment. The assessor will be asked to determine the reasonable costs to be paid on the standard basis as provided for under Part 44 of the Civil Procedure Rules.

Other parties' costs and expenses

- 3.27 We will apply the factors set out above in deciding whether it is appropriate for Ofcom to require a party to pay the costs and expenses of one or more of the parties to a dispute. In doing so, we will indicate to the parties to a dispute whether we consider one or more parties to that dispute should pay the costs and expenses of another party (or parties) to that dispute. We will do this as soon as possible and usually within 4 weeks after issuing a final determination;
- 3.28 We would expect parties in the first instance to seek to agree the level of those costs. We may at our discretion set a timetable for the parties to reach agreement. If such agreement is not forthcoming after the specified date then the party who is have their costs paid by another party shall submit to us a detailed breakdown of the costs which they are seeking. We will not ourselves seek to assess the appropriate level of other parties' costs and expenses but will instead have them assessed by an independent third party assessor chosen by us. The assessment will be undertaken on the same basis as set out above. The costs of the third party assessor will initially be paid by the party seeking their costs. The assessor will be asked to make a recommendation to Ofcom as to the appropriate level of costs and Ofcom will then make a decision as to the costs to be paid, including whether the party paying the costs should also pay the costs of the third party assessment.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 December 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at [http://stakeolders.ofcom.org.uk/consultations/\[xxx\]](http://stakeolders.ofcom.org.uk/consultations/[xxx]), as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email competition.complaints@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Keith Loader
Competition Group
Fourth Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Keith Loader on 020 7783 4165.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in winter 2012/13.
- A1.12 Please note that you can register to receive free e-mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)