

Final

Ofcom: General policy on information gathering

BBC Licence Fee Unit Submission

1.1 Executive Summary

- We agree with the general policy on information gathering as proposed by Ofcom.
- It may be pertinent and transparent to briefly describe the appropriate circumstances where Ofcom would deviate from this policy.
- It is vital that Ofcom's regulatory decisions are based on a strong evidence base.
- The needs of consumers and citizens must override the need of stakeholders' privacy in not disclosing information.
- Ofcom may want to consider the publication of the information they hold, to ensure transparency and to ensure key stakeholders have confidence in Ofcom's regulatory analysis, investigation and decisions.
- Ofcom may have to balance the need of proportionality against the needs of the regulatory investigation and subsequent decision making.
- Ofcom should also consider a limited consultation on the requests to ensure they have best practice embedded early in the process so saving time and resource.
- The nature of the information request and deadlines should be agreed at the draft information request stage between the stakeholder and Ofcom.
- Where Ofcom needs to use the information gathered for a different purpose, Ofcom should consider issuing a new draft information request.
- Ofcom must be encouraged to engage with stakeholders on the change of purpose to ensure stakeholder trust and confidence in the regulatory process.

2.1 Introduction

2.1.1 The BBC Licence Fee Unit welcomes the opportunity to submit evidence to the consultation, Ofcom: General policy on information gathering.

2.1.2 The BBC contracts with a number of companies to administer the television licensing system (together with the BBC Licence Fee Unit Management Team these companies are known publicly as TV Licensing). The BBC Licence Fee Unit sits within the BBC Finance and Business Division, and ultimately reports to the BBC Executive Board. The BBC is governed by the BBC Trust which represents the interests of licence fee payers and approves the overall strategy.

2.1.3 TV Licensing inform people of the need to buy a TV licence. TV Licensing send licence renewal letters and process queries, applications and payments. TV Licensing also maintain a database of licensed and unlicensed addresses in the UK and use this data to identify and visit people who are believed to be using a TV receiver without a valid licence.

2.1.4 The BBC Licence Fee Unit uses the UK postal system: Access and Royal Mail Retail, to communicate with consumers. The BBC Licence Fee Unit mails approximately 55m communications each year. This mail is classified as transactional mail.

3.1 Ofcom's specific question – BBC Licence Fee Unit response

Question 1: Respondents are invited to comment on Ofcom's proposed general policy on the use of statutory information gathering powers.

We have the following comments to make on Ofcom's proposed general policy on the use of statutory information gathering powers. We have addressed our comments to each of the numbered policy points laid out in the consultation document but solely in relation to postal services (reference Postal Services Act 2011)

1. This is Ofcom's statement of general policy on information gathering for the purposes of the Communications Act 2003 (the "2003 Act"), Wireless Telegraphy Act 2006 (the "2006 Act"), and Postal Services Act 2011 (the "2011 Act"). Ofcom will have regard to it in using statutory information gathering powers. However, Ofcom reserves the right to deviate from this policy in appropriate circumstances. Where we do so, we will generally explain our reasons.

We agree with the above policy changes. It may be pertinent and transparent to briefly describe the appropriate circumstances where Ofcom would deviate from this policy. Such an approach would ensure stakeholders would support Ofcom's policy.

2. In order to exercise our functions under the 2003, 2006 and 2011 Acts in a way that is effective, evidenced-based and also proportionate, we need to ensure that our regulatory decisions are founded on a robust evidence base. Our experience is that the information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.

We agree with the above policy changes. It is vital that Ofcom's regulatory decisions are based on a strong evidence base. The repository for all this information sits within key stakeholders.

3. In that context, the statutory information gathering powers conferred on Ofcom by Parliament are the principal tool by which we can obtain information from stakeholders in support of our functions. These powers enable us to address the information asymmetry that may exist between Ofcom and operators in the sectors we regulate and to discover, obtain and use that information to take the best possible decisions. The powers also allow us to compel the provision of certain information that stakeholders might not otherwise wish to provide, for instance when considering the case for regulation in the interests of citizens and consumers or when enforcing regulatory obligations.

We agree with the above policy changes. The statutory information gathering powers are fundamental to effective regulation by Ofcom of the postal sector. The needs of consumers and citizens must override the need of stakeholders' privacy in not disclosing information.

4. In the course of our regulatory activities we have had recourse to our statutory information gathering powers frequently and we expect that we will continue to do so. Ofcom holds a significant amount of in-house information and collects a wide range of data on various aspects of the industry. Wherever possible, Ofcom will draw from existing information sources to avoid unnecessary duplication of effort and to minimise the

burden placed on those from whom information is requested. However, despite this comprehensive evidence base there will remain specific areas where it is necessary to collect additional information.

We agree with the above policy changes. Ofcom may want to consider the publication of the information they hold, to ensure transparency and to ensure key stakeholders have confidence in Ofcom's regulatory analysis, investigation and decisions. Where such publication may cause embarrassment or have competitive implications, Ofcom could summarise the information held.

5. Statutory demands for information made by Ofcom must be proportionate and must describe the information required and state the reasons why it is required. Statutory information requests must be set out in a notice and be served on the person from whom the information is requested. We will issue information requests with a letter setting out this information together with information that may be useful to stakeholders, e.g. a link to the statutory framework. Unless we have agreed other arrangements with the recipient of the request under section 395 of the 2003 Act, the statutory notice containing an information request will be issued in hard copy addressed to the Company Secretary and copied to the relevant regulatory personnel. We will also ordinarily send a copy by email where such details are available to us.

We agree with the above policy changes. Ofcom should also consider stating in the information request the importance of the information requested. In addition Ofcom may have to balance the need of proportionality against the needs of the regulatory investigation and subsequent decision making. The process of communication re the information request should include e-mail communication to speed up the process and give the information provider early warning of the information request.

6. Where our regulatory activities are dependent on information held by stakeholders, we will, as a general rule, seek to obtain that information using our statutory information gathering powers. Particularly when we are exercising enforcement and dispute resolution functions we are likely to issue information requests without engaging informally with the recipient first.

We agree with the above policy changes. Although the exercise of using statutory information gathering powers and issue of information requests without engagement is completely understandable in the context of enforcement and dispute resolution, it is hoped that Ofcom would have sufficient engagement with key stakeholders to ensure there was an element of engagement and cooperation prior to the issue of an information request.

7. Beyond our enforcement and dispute resolution functions, we are responsible in a number of contexts for reviewing markets and considering the necessity of regulatory actions – for instance, in conducting market reviews under the 2003 Act, in exercising our spectrum management functions under the 2006 Act, or in considering how to carry out our functions in a manner that will secure the provision of a universal postal service under the 2011 Act. In exercising those types of functions, we often benefit from the provision of information from stakeholders on a voluntary basis and from a constructive dialogue in relation to a range of issues. We welcome that engagement from stakeholders in what are often complex, technical matters and want it to continue in future. In order to ensure that our evidence base is robust, complete and non-biased we will, however, generally seek to obtain all necessary information using our statutory powers. Where information that is potentially material to our decision

making has already been provided on a voluntary basis, we will generally use our statutory powers to confirm the completeness and accuracy of that information. Further, where we have been told that such information is not available, we will generally use our statutory powers to obtain formal confirmation of this.

We agree with the above policy changes. Accessing and obtaining information for market reviews and potential regulatory action is fundamental and its good practice to ensure its provision. The use of statutory powers may not be required in some cases, due to the ongoing engagement with key stakeholders by Ofcom. The accessing of information which is not available should utilise the full statutory powers, particularly where Ofcom are told the information is not available as the stakeholder does not want to reveal the information.

8. In appropriate circumstances Ofcom may first issue an information request asking for details of what information is held on a particular topic and in what form (e.g. whether it is held on particular databases). Having reviewed the response to that request, and discussed it as necessary with the relevant stakeholder, Ofcom may then subsequently issue further targeted statutory information requests to obtain the specific information required. This approach may be of particular use where Ofcom needs to understand what information is held by a stakeholder and in what form before investigating a matter further. It is likely to be of particular use, for example, at the outset of a market review (or similar exercise) when it is important to understand exactly what information might be available to aid the analysis.

We agree with the above policy changes. The use of targeted information requests should be encouraged as in many cases the information can be found quicker with reduced impact on the stakeholder and Ofcom. By the same token Ofcom should consider disclosure of the information they hold, to ensure transparency and trust in the regulatory process (see response to point 4.).

9. Ofcom will assess on a case-by-case basis whether it is appropriate to send a statutory information request in draft form to the person holding the relevant information. Our starting presumption will be that we will not issue the request in draft form unless there is a clear benefit from doing so. We would expect to contact the stakeholder concerned by telephone or email to advise them to expect the request. However, there are likely to be cases where Ofcom would benefit from issuing a request in draft form in order to ensure that the request is appropriately worded and sufficiently clear for the recipient to respond within the period set for a response.

We agree with the above policy changes. The issuance of draft statutory information requests will speed up the process of information gathering, ensure clarity for the stakeholder and greater transparency in the information gathering and regulatory process.

10. Where Ofcom issues an information request in draft, we will generally offer three working days for comment, in particular on the practicality of providing the information in the proposed timescales. In appropriate cases Ofcom would expect to discuss the draft information request with the stakeholder concerned to ensure that request is sufficiently clear and appropriately targeted. Following receipt of comments Ofcom will then confirm or amend the information request.

We agree with the above policy changes. On the issuance of draft statutory information requests Ofcom should consider an ongoing dialogue with all stakeholders who receive

requests. In addition, the issuance of draft information requests should build experience and best practice in the structure of the requests. Ofcom should also consider a limited consultation on the requests to ensure they have best practice embedded early in the process so saving time and resource.

11. Given the tight timescales within which we are required to reach a determination under our dispute resolution functions, we may set compressed deadlines for the provision of information under section 191 of the 2003 and will not normally issue information requests in draft form.

We agree with the above policy changes. The nature of dispute resolution requires a reduced timetable to obtain the information. Ofcom should consider limited consultation to get the right structure of form in place to remove ambiguities and maximise transparency.

12. Ofcom expects stakeholders to comply with the deadlines set in information requests. Ofcom will not normally agree to an extension of deadlines unless there are good reasons for doing so. In the event that there is an issue with a particular information request, however, this may be raised in writing, giving reasons, and where a change is justified the request may exceptionally be amended formally. Concerns should be raised with Ofcom sufficiently in advance of the deadline for responding.

We agree with the above policy changes. The nature of the information request and deadlines should be agreed at the draft information request stage between the stakeholder and Ofcom.

Question 2: Respondents are invited to comment on Ofcom's proposed use of the information that it will gather using its statutory powers.

We have the following comments to make on Ofcom's proposed use of the information that it will gather using its statutory powers. We have addressed our comments to each of the numbered policy points laid out in the consultation document but solely in relation to postal services (reference Postal Services Act 2011)

13. The uses to which Ofcom will put information under the relevant provisions of the 2003, 2006 and 2011 Acts follow from the purpose or purposes for which that information was obtained. As noted above, Ofcom's reasons for requiring the information requested must be explained in any statutory demand for information under those Acts.

We agree with the above policy changes. The nature of the information request and deadlines should be agreed at the draft information request stage between the stakeholder and Ofcom. That use can be discussed and agreed between the stakeholder and Ofcom at the draft stage. This ensures transparency and trust in the information and regulatory process.

14. Where Ofcom has obtained information for a specified purpose and wishes to use that information for a different purpose, it will generally first notify the party who provided the information, explaining why it needs to use the information for the different purpose. Where the party who provided the information objects to use of the information for the different purpose, Ofcom will then normally use its statutory information gathering powers to require that the information be provided for the new purpose. There may, rarely, be circumstances where this is not possible, for example because of statutory timing constraints or because of the risk of prejudicing an ongoing investigation.

Final

We agree with the above policy changes. In an instance where Ofcom needs to use the information gathered for a different purpose, Ofcom should consider issuing a new draft information request. This ensures transparency and trust in the process. Ofcom must be encouraged to engage with stakeholders on the change of purpose to ensure stakeholder trust and confidence in the regulatory process.