

Ofcom ref: 00510127

Information Requests

Email: information.requests@ofcom.org.uk

8 February 2018

Ref: 00510127 Freedom of Information: Right to Know Request

Thank you for your request for information which was received on 11 January 2018 and has been considered under the Freedom of Information Act 2000 (“the FoI Act”).

Please find below our response to each of the questions you asked.

1. *Documentation indicating the number of Ofcom employees responsible for considering complaints against television broadcasters who have previously worked for the BBC;*

The information you requested is not held. We do not hold searchable information on our systems based on employees’ previous place of employment. Furthermore, it is not unusual for Ofcom’s employees to be rotated to different work strands and therefore individual employees responsible for considering complaints now may not necessarily be the same as those responsible a year ago or even six months ago.

2. *Documentation indicating the number of complaints regarding the BBC's post-referendum Brexit coverage, how they have been classified and the number of complaints upheld by Ofcom;*

Prior to April 2017, complaints relating to programmes on BBC services funded by the licence fee about due accuracy, due impartiality, elections and referendums were regulated by the BBC Trust. We log complaints on our complaints database by category of the complaint issue (with reference to the rules in our codes). There is no specific category (or rule) used exclusively to identify the individual subject of a complaint such as “Brexit”. We are therefore unable to provide the specific information you requested.

For your information, complaints about broadcast standards are handled under our *Procedures for handling complaints, investigations and sanctions on TV, radio and video-on-demand services*¹. After

¹ Available at:

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

an initial assessment, we consider whether there may have been a breach of our rules, including the Broadcasting Code. In cases where we think there may have been a breach, we will launch an investigation. The possible outcomes of an investigation are that we decide an issue is in breach, resolved or not in breach of our rules. Ofcom's Broadcast and On Demand Bulletin, published every fortnight on our website, includes decisions about the complaints we have considered here, with reference to the rules in our codes: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>.

3. *Any letters or e-mails sent by you or Ms. (Sharon) White to the BBC since the EU referendum regarding its Brexit coverage, and the BBC's responses to those communications;*

What we think you are asking for in this question is correspondence sent by the addressee, David Best, or Sharon White, Ofcom's CEO. about how Ofcom has handled complaints about the BBC's post referendum Brexit coverage. We do not have such correspondence.

If we did have correspondence of the kind described above we would probably be unable to disclose it as it is likely to be exempt from disclosure under S44 of the FoI Act. This exemption allows information to be withheld when its disclosure is prohibited under other legislation.

Section 393 of the Communications Act 2003 prevents Ofcom disclosing information about a particular business (e.g. complaints regarding Brexit coverage) unless we have the consent of that business or releasing that information helps Ofcom to carry out its duties, neither of which would apply here. This is so that Ofcom can operate effectively by being able to handle and share confidential correspondence with the businesses it regulates. For further information on section 44 of the FoI Act, please see: <http://www.legislation.gov.uk/ukpga/2000/36/section/44> However, as outlined above Ofcom's Broadcast and On Demand Bulletin is published every fortnight on our website at <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>, and includes decisions about the complaints we have considered.

4. *Any correspondence between Ofcom and the BBC or others representing the BBC relating to the 20-day limit for complaints to Ofcom. (I am particularly interested in whether the BBC lobbied for this short window for complaints and whether Ofcom simply acquiesced. If you have any other information explaining your decision to operate a 20-day limit I would be happy to receive it, although it does not formally constitute part of this FoI request)*

A new BBC Royal Charter and Agreement was published in December 2016, which gave Ofcom new regulatory powers over the BBC. Ofcom took up its new responsibilities as the BBC's first external regulator on 3 April 2017. Prior to this, complaints relating to programmes on BBC

Please note that since April 2017, complaints about BBC content have been subject to Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS, here: https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

services funded by the licence fee about due accuracy, due impartiality, elections and referendums were regulated by the BBC Trust and not Ofcom.

In 2017 in preparation for its new role in respect of the BBC, Ofcom publicly consulted on its procedures for handling content standards complaints, investigations and sanctions for BBC programmes. All submissions on that consultation and the Statement together with final procedures are available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/bbc-content-standards-investigations-and-sanctions>

Any correspondence between Ofcom and the BBC or others not directly related to that consultation and published above is exempt from disclosure under Section 44 of the FoI Act.

Ofcom's procedures for BBC complaints² post 3 April 2017 can be found via the above link, these state:

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

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) in deciding whether or not Ofcom should investigate the complaint despite the delay in submission."

We would also like to draw your attention to the fact for complaints relating to broadcasters other than the BBC there has been a 20-day time limit in place for a number of years.

Finally, we note you refer to a letter dated 20 October 2017 which you said you sent to Ofcom. Unfortunately, we have no record of having received that letter, but if you provide a further copy we will be happy to consider all the relevant factors as to whether to investigate your complaint outside our usual timeframe.

We hope this information is of assistance. If you have any queries then please contact information.requests@ofcom.org.uk. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Information Requests

² https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exception cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF