



Procedures for enforcement of requirements in the BBC Agreement and compliance with Ofcom enforcement action

Publication date:

29 March 2017

About this document

The role of the BBC is to produce high quality and distinctive programmes and services which educate, inform and entertain. Given its status as a large, publicly-funded organisation, it is essential that the BBC maintains the highest standards and can be held to account when it fails to meet them.

Under the new Royal Charter and Agreement, regulation of the BBC will pass 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 Agreement.

This document sets out our procedures for investigating:

- a) breaches by the BBC of certain requirements set out in the Agreement; and
- b) a failure by the BBC to comply with enforcement action by Ofcom in accordance with any of Ofcom's enforcement procedures applicable to the BBC.

These procedures will come into effect when Ofcom takes over responsibility for regulating the BBC on 3 April 2017.

Procedures for enforcement of requirements in the BBC Agreement and compliance with Ofcom enforcement action

Introduction

- 1.1 This document outlines Ofcom’s Procedures for the handling and resolution of complaints (or for the conduct of its own investigations) into possible breaches by the BBC of requirements set out in the Agreement¹ which are not covered by any of the specific BBC procedures set out below in paragraph 1.8.² These requirements are discussed in further detail in paragraphs 1.9 to 1.11 below.
- 1.2 The Procedures set out in this document are those Ofcom will usually follow in order to investigate whether a breach of a “relevant requirement” has occurred. The Procedures set out in this document are effective from 3 April 2017.³
- 1.3 These Procedures also cover the investigation of any failure by the BBC to comply with a direction made by Ofcom, or undertaking offered by the BBC, under Article 49(2) of the Charter⁴ for the purposes of remedying a failure to comply with any specified requirement and/or ensuring that the BBC complies properly with its requirements in the future.
- 1.4 If Ofcom considers it necessary to depart from these Procedures in any material respect in a particular case for reasons of fairness and/or in order for Ofcom properly to consider a complaint(s) or carry out an investigation, it will write to the BBC (and any other relevant party) in advance, setting out the nature/extent of its departure and its reasons for doing so.

Statutory framework

- 1.5 Ofcom regulates the BBC by virtue of section 198 of the Communications Act 2003 (“the 2003 Act”) to the extent that provision to do so is contained in the BBC Charter and Agreement, the 2003 Act and Part 5 of the Broadcasting Act 1996.

¹ ‘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>.

² Our existing General procedures for investigating breaches of broadcast licences will continue to apply to other broadcasters including commercial BBC companies licensed by Ofcom, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf. Ofcom has no remit to consider complaints concerning the World Service.

³ Other methods of redress may be available to complainants through the civil courts. Complainants may wish to obtain legal advice.

⁴ ‘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>.

- 1.6 In accordance with the Charter, Ofcom must enforce compliance by the BBC with the specified requirements set out in the Agreement⁵. These requirements include⁶:
- a) any requirement imposed on the BBC by Ofcom in the Operating Framework;
 - b) any regulatory condition imposed on the BBC in the operating licence;
 - c) the various regulatory obligations set out in Schedule 3 of the Agreement (excluding the obligation on editorial guidelines⁷);
 - d) the requirement for the BBC to provide information to Ofcom under the Charter;⁸ and
 - e) requirements relating to the retention, provision and publication of information relating to complaints.⁹
- 1.7 The Charter provides¹⁰ that If Ofcom is satisfied that the BBC has failed to comply with a specified requirement, Ofcom may:
- f) direct the BBC, or accept undertakings from the BBC, to take such steps as Ofcom considers will:
 - i) remedy the failure to comply;
 - ii) ensure that the BBC complies with its requirements properly in future.
 - g) serve on the BBC a notice requiring it to pay them, within a specified period, a specified financial penalty. The maximum penalty that may be imposed on any occasion is £250,000.¹¹

When do these Procedures apply?

- 1.8 Ofcom has produced specific procedures, which apply to investigations of potential breaches by the BBC of specified requirements under the Agreement. These specific procedures are listed in the table on the following page. A breach by the BBC of the requirements shown in the table below would generally be investigated under the corresponding specific procedure and would not be covered by these Procedures.

⁵ Charter, Article 49.

⁶ Agreement, Clause 59.

⁷ Agreement, Clause 59(c).

⁸ Charter, Article 47.

⁹ Agreement, Clauses 56(6) - (8).

¹⁰ Charter, Article 49(2).

¹¹ The maximum specified in section 198(5) of the 2003 Act.

Table 1: Requirements covered by the specific procedures

Requirement/s dealt with	Specific procedure
Requirement to observe the content standards objectives applied in the Ofcom Broadcasting Code. ¹²	Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services. ¹³
Requirement to observe the fairness and/or privacy requirements applied in the Ofcom Broadcasting Code. ¹⁴	Procedures for the consideration and adjudication of Fairness & Privacy complaints on BBC broadcast services and BBC on demand programme services. ¹⁵
<p>Requirements which Ofcom consider appropriate to ensure fair and effective competition in relation to the UK Public Services.¹⁶</p> <p>Requirements which Ofcom consider appropriate to ensure that the BBC's commercial activities do not, as a result of their relationship with UK Public Services, trading activities, or non-service activities, distort the market or gain an unfair competitive advantage.¹⁷</p> <p>Requirements which Ofcom consider appropriate to protect fair and effective competition in relation to other activities carried out by the BBC.¹⁸</p> <p>The requirement whereby, in relation to 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.¹⁹</p>	Procedures for the enforcement of BBC competition requirements. ²⁰

¹² Agreement, Schedule 3, Paragraph 3.

¹³ See: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

¹⁴ Agreement, Schedule 3, Paragraph 4.

¹⁵ See: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

¹⁶ Agreement Clause 15(4).

¹⁷ Agreement, Clause 28(1).

¹⁸ Agreement, Clause 22(2), Clause 31(3).

¹⁹ Agreement, Schedule 3, paragraph 7(2).

²⁰ A consultation on Ofcom's draft procedures closed on 6 March 2017. The consultation can be found here: https://www.ofcom.org.uk/data/assets/pdf_file/0039/96798/Procedures-for-enforcement-of-BBC-competition-requirements.pdf. Ofcom will publish finalised procedures in due course.

- 1.9 These Procedures apply to investigations of potential breaches by the BBC of all other specified requirements, which are not included in the list above.
- 1.10 These requirements are referred to in this document as “relevant requirements”. The relevant requirements include:
- a) those imposed on the BBC in the Operating Framework²¹;
 - b) regulatory conditions imposed on the BBC in its Operating Licence²²;
 - c) the requirement not to charge for reception²³;
 - d) the requirement to comply with quotas for the broadcasting of independent productions under the 2003 Act and under Schedule 3 of the Agreement²⁴;
 - e) the specific requirements of Schedule 3, paragraph 7(1) of the Agreement in relation to television programmes, radio programmes and online material;
 - f) the requirement to draw up, revise and comply with a code relating to programme commissioning²⁵;
 - g) the requirement to comply with a code drawn up by Ofcom giving guidance as to (a) the extent to which the UK Public Services should promote the understanding and enjoyment by persons who are hearing impaired, visually impaired or dual sensory impaired of programmes; and (b) the means by which such understanding and enjoyment should be promoted²⁶;
 - h) the requirement to retain and provide recordings to Ofcom²⁷;
 - i) the requirement to comply with Ofcom notifications regarding international obligations of the UK in respect of UK Public Services²⁸;
 - j) the requirement to promote equal opportunities in employment²⁹;
 - k) the requirement to make arrangements for training and retraining of staff engaged in connection with providing any of the UK Public Services³⁰;
 - l) the requirement to make those affected by equal opportunity and training arrangements aware of them, review those arrangements and publish a report on the arrangements once a year³¹;

²¹ Agreement, Clause 59(a).

²² Agreement, Clause 13.

²³ Agreement, Schedule 3, paragraph 1.

²⁴ Agreement, Schedule 3, paragraph 6.

²⁵ Agreement, Schedule 3, paragraph 8.

²⁶ Agreement, Schedule 3, paragraph 9. Please note that under the Agreement, Schedule 4, paragraph 5 (3), Ofcom’s Code on Television Access Services provided for under clause 59 of the 2006 Agreement will continue to apply to the BBC under clause 59 of the Agreement until Ofcom issues a new code.

²⁷ Agreement, Schedule 3, paragraph 10.

²⁸ Agreement, Schedule 3, paragraph 11.

²⁹ Agreement, Schedule 3, paragraph 12.

³⁰ Agreement, Schedule 3, paragraph 13.

³¹ Agreement, Schedule 3, paragraph 14.

- m) the requirement to provide Ofcom with information it has requested³²;
- n) the requirement to retain records of its handling of relevant complaints³³;
- o) the requirement to provide reports to Ofcom in relation to relevant complaints³⁴;
- p) the requirement to publish information about the operation and effectiveness of the complaints procedures in relation to relevant complaints³⁵; and
- q) any requirement to comply with a direction made by Ofcom, or an undertaking given by the BBC, in accordance with Article 49(2) of the Charter.

Procedures

- 1.11 Ofcom may launch investigations on its own initiative as well as investigate complaints made by others. The Procedures in a complaint-led investigation and an Ofcom-initiated investigation are the same.

Making a complaint

- 1.12 Complaints under these Procedures can be made to Ofcom by any person or body who considers that the BBC has failed to comply with a relevant requirement.
- 1.13 Ofcom will expect a complainant to refer its complaint to the BBC in the first instance. A complainant may then make a complaint to Ofcom if:
- a) the complainant is not satisfied with the resolution of the complaint by the BBC;
 - b) the 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;
 - c) the BBC has failed to resolve a complaint within the timeframe set in its complaints handling procedures³⁶.
- 1.14 Ofcom may consider complaints which are not referred to the BBC in the first instance in exceptional circumstances.³⁷ If the complainant considers that there are exceptional circumstances for not referring a complaint to the BBC in the first instance, it should clearly explain this in its complaint submission to Ofcom. Ofcom will decide whether to consider such complaints on a case-by-case basis.
- 1.15 Ofcom has published guidance on how individuals working in the communications sector may contact us if they have concerns about possible wrongdoing at their own organisation and where they have been unable to raise or resolve those concerns

³² Charter, Article 47. We are considering whether we require further guidelines on our information gathering powers moving forwards and this will include a consideration of whether we require such guidelines for third parties.

³³ Agreement, Clause 56(6), Clause 56(9) provides that for the purposes of the Agreement "Relevant complaint" means a complaint that the BBC has failed to comply with a specified requirement.

³⁴ Agreement, Clause 56(7) and 59(c).

³⁵ Agreement, Clause 56(8) and 56(9).

³⁶ Charter, Article 56(3); Agreement, Article 57(1). The BBC's complaint handling procedures are located on its website.

³⁷ Agreement, Clause 57(2)

internally.³⁸ Such disclosures can be made in confidence to the Secretary of the Corporation.

- 1.16 Unless a complainant asks Ofcom not to do so, Ofcom may disclose the complainant's identity to the BBC as well as sharing a non-confidential version of the complaint submission with it for comment. Ofcom will consider requests from complainants to remain anonymous. However, it may not be feasible to open or conduct an investigation without revealing the identity of the complainant. This does not apply to whistleblowers³⁹.
- 1.17 The BBC's timeframe for resolution of complaints regarding non-compliance with a specified requirement is set out in the BBC's complaints handling procedures (referred to in these procedures as the "BBC deadline"). If the BBC reaches a final decision before the BBC deadline, we would expect the complainant to refer the complaint to Ofcom within 2 months of the date of the BBC's final decision. If the BBC does not reach a final decision or resolve the complaint before the BBC deadline, we would expect the complainant to refer the complaint to Ofcom within 2 months of the date of the BBC deadline.
- 1.18 Ofcom will consider complaints referred to it outside of these timeframes in exceptional circumstances, and will decide whether to do so on a case-by-case basis.
- 1.19 Ofcom requests that complaints are submitted via its complaint form, available at <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint>. Alternatively, you can contact us at: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone 0300 123 3333 or 020 7981 3040.
- 1.20 People with sensory impairments who find it easier to do so may call our text phone on 020 7981 3043 (please note that this number only works with special equipment used by people who are deaf or hard of hearing). People with visual impairments wishing to complain may wish to use our dedicated email address: adcomplaints@ofcom.org.uk. A Video Relay Service to contact Ofcom in British Sign Language is available on Ofcom's website.

Information to be provided

- 1.21 All complaints should include sufficient detail about the matter complained of to enable Ofcom to investigate fully. All complaints should, therefore, include details about what is alleged to have been done, or not done, in relation to which BBC service (where relevant) together with the BBC's final response to the complaint (where received). A failure to provide these details may mean that Ofcom is not able to investigate the complaint. The complainant's full contact details (including email address where appropriate) should also be included⁴⁰.

³⁸ See Procedure for making a disclosure to Ofcom under the Public Interest Disclosure Act 1998 ('PIDA') at <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines>.

³⁹ Ofcom is a "prescribed person" under Part IVA of the Employment Rights Act 1996 (as inserted by PIDA) to which "qualifying disclosures" can be made about certain matters, including broadcasting and the provision of television and radio services.

⁴⁰ Please see Ofcom's General Privacy Statement (available on our website at: <https://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement>) for information about how Ofcom handles your personal information and your corresponding rights.

Initial assessment

- 1.22 Ofcom may investigate the BBC's compliance with a relevant requirement following receipt of a complaint or on its own-initiative (for example, where information comes to Ofcom's attention during routine monitoring). When deciding whether to open an investigation, Ofcom will consider whether, on its face, there are potentially substantive issues in relation to a relevant requirement that warrant investigation by Ofcom. It will do so by reference to the gravity and/or extent of the matter at issue. In addition, if Ofcom considers that the BBC has reached an appropriate decision, it will consider whether the imposition by Ofcom of a sanction against the BBC may be appropriate in accordance with the procedures set out in paragraphs 1.49ff.
- 1.23 Ofcom may ask the BBC for information to assist our consideration of the matter(s), and/or – in cases relating to the output of a broadcast service or on-demand service – recordings of the relevant output/programme(s), which must be provided within five working days⁴¹. At this stage we will not normally request that the BBC provides written representations.
- 1.24 Based on an initial assessment of the issues, the BBC's final response to the complaint under its own procedures (where applicable), and any other relevant material/evidence from the BBC, Ofcom will consider whether there may have been a breach of a relevant requirement(s) that Ofcom considers requires further investigation.
- 1.25 Where, following the initial assessment, Ofcom decides not to investigate further, Ofcom will normally notify the complainant of its decision. If Ofcom has contacted the BBC for information or recordings to assist in the assessment of the issue or complaint, Ofcom will notify the BBC of its decision not to pursue the matter. Ofcom will also normally publish details of its decision not to investigate in a table in its Broadcast and On Demand Bulletin. However, there may be some cases where Ofcom considers it would be inappropriate to publicise the matter, for example because the issues raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of).
- 1.26 Ofcom may also conclude at the assessment stage that a complaint did raise a potentially substantive issue in relation to a relevant requirement(s) but that on Ofcom's assessment, the issue was appropriately dealt with by the BBC and does not require a separate investigation by Ofcom. Ofcom will notify the complainant of this outcome through publication in the Broadcast and On Demand Bulletin.
- 1.27 Ofcom usually aims to complete its initial assessment within 15 working days.

Investigating possible breaches and preparation of Ofcom's Preliminary View

- 1.28 Where, following Ofcom's initial assessment, Ofcom decides to open an investigation into the BBC's compliance with a particular relevant requirement, Ofcom will generally inform the BBC and any complainant by sending them each a case opening letter explaining the scope of Ofcom's investigation (i.e. the particular relevant

⁴¹ Under the Agreement, the BBC must comply with any request to produce recordings of programmes and any related material to Ofcom.

requirement(s) which Ofcom considers are relevant and applicable to the complaint(s) or matters concerned.

- 1.29 Shortly after sending the case opening letter(s), Ofcom will normally publish details of issues under investigation in a table in its Broadcast and On Demand Bulletin. However, there may be some cases where Ofcom considers that it would be inappropriate to publicise the matter at this stage, for example because the issues raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of). In such cases, Ofcom may delay publicising the investigation until after Ofcom has completed its consideration of the BBC's compliance with a relevant requirement or may decide not to publicise such cases at all.
- 1.30 Other than in cases falling within paragraph 1.31 below, when Ofcom sends the BBC the case opening letter, Ofcom will invite the BBC to make representations in response (and to provide any relevant material/evidence in support) within 10 working days.
- 1.31 If in any case Ofcom considers that it is necessary to obtain further information to ensure that it can fairly and properly prepare its Preliminary View, Ofcom may seek such information before preparing that Preliminary View.
- 1.32 There may be specific cases where the matter(s) in issue, on the facts, mean that Ofcom does not consider it necessary to seek representations or any further information from the BBC at this stage. This will normally be where the question of whether there is a breach of a relevant requirement is a matter of objective fact. There may also be other specific cases where the matter(s) in issue, on the facts, mean this approach is appropriate. In these cases, Ofcom will not usually seek the BBC's representations at this stage. Instead, Ofcom will write to the BBC with its Preliminary View on the substance of the matter(s).
- 1.33 Ofcom aims to complete those cases that it takes forward for investigation usually within 50 working days.

Representations from third parties

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint(s) and who may have interests independent of the BBC. Wherever possible, the BBC should seek to take account of and include the representations of such persons/bodies in its submissions in response to a complaint and confirm to Ofcom that it has done so.

However, such persons/bodies may make representations on their own behalf direct to Ofcom in respect of a complaint which Ofcom proceeds to investigate. In such a case, persons/bodies should seek to make representations to Ofcom as early in an investigation of a complaint as possible, setting out if/to what extent their representations differ from those of the BBC. Ofcom will, as appropriate, take those representations into account and include those persons/bodies in its decision-making process under these Procedures.

Preparation of Ofcom's Preliminary View

- 1.34 Ofcom will prepare its Preliminary View on the substance of the possible breach of the relevant requirement(s). This Preliminary View is only provisional and may be subject to change in the light of subsequent representations provided by the BBC.
- 1.35 Where Ofcom considers in a particular case that it would be appropriate in order to reach its Preliminary View, Ofcom will provide a draft Preliminary View to a panel of Ofcom's Content Board members⁴² for their advisory opinion. The decision to issue a Preliminary View will be taken by a senior member of Ofcom's Executive with appropriate Board-delegated authority. Typically, this would be the person who is responsible for overseeing the investigation.
- 1.36 The Preliminary View will contain:
- a) a summary of the matter, and if relevant, any complaint;
 - b) a summary, if relevant, of the material parts of the programme/broadcast to which the matter and/or any complaint(s) relates;
 - c) the particular relevant requirements that Ofcom considers are applicable to the matter/complaint(s); and
 - d) Ofcom's preliminary assessment of whether any breach(es) of those requirements have occurred and the reasons for that assessment.
- 1.37 When Ofcom has prepared its Preliminary View, Ofcom will provide it to the BBC (and any relevant third party).
- 1.38 The BBC (and any relevant third party) will have the opportunity to make written representations on Ofcom's Preliminary View. The period for written representations will normally be 10 working days.
- 1.39 Ofcom considers that it will normally be able to reach its final Decision fairly and properly following written representations and without oral representations from the BBC. However, there may be some cases where, in view of the nature of the breach under consideration and the complexity of the issues raised, Ofcom considers it appropriate to give the BBC the opportunity to make its representations orally to Ofcom, following the submission of any written representations to Ofcom.⁴³ Ofcom will inform the BBC if it considers that it is appropriate to it the opportunity to make oral representations in a particular case.
- 1.40 In any event, the BBC may, in any particular case, make a written request to make its representations orally to Ofcom in addition to any written representations. Ofcom will agree to such a request if Ofcom considers that an oral hearing is appropriate in view of the nature of the breach under consideration and the complexity of the issues raised.

⁴² The Content Board is a committee of the main Ofcom Board established by the Communications Act 2003. It includes members with extensive broadcasting experience. See <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/content-board>.

⁴³ The final decision maker would chair any oral hearing.

The Final Decision

- 1.41 Once Ofcom has received and considered the BBC's representations on its Preliminary View (if any) and/or any representations from a relevant third party, it will reach its final decision (i.e. whether or not to record a breach of a relevant requirement(s)) ("the Decision").
- 1.42 Where a panel of Content Board members has reviewed in the draft Preliminary View in a particular case, generally the draft decision in that case would be provided to a panel of Ofcom's Content Board members (who have not been involved in the investigation) for their advisory opinion before a final decision is taken.
- 1.43 The final decision will be taken by a senior member of Ofcom's Executive with appropriate Board-delegated authority, who will not have been involved in the investigation and/or the preparation of the Preliminary View.

Publication of the Decision

- 1.44 Where Ofcom has found that the BBC has breached a relevant requirement(s), Ofcom will publish its Decision in Ofcom's Broadcast and On Demand Bulletin⁴⁴ and/or in the relevant broadcast licensing section of the website. Ofcom will normally publish all breach and resolved Decisions, even where Ofcom has not previously publicised details of the matters under investigation in accordance with paragraph 1.29 above.
- 1.45 Ofcom will provide the BBC for information only with an embargoed copy of the Decision one working day before publication.
- 1.46 Ofcom will also normally publish information in its Broadcast and On Demand Bulletin about Decisions in which it has found that the BBC has not breached a relevant requirement. However, where Ofcom has not published details of an issue under investigation, Ofcom would not normally publish a "not in breach" decision at the conclusion of the investigation.

Non-Disclosure

- 1.47 It is an essential part of the integrity of Ofcom's processes and its ability to regulate that all parties concerned abide by Ofcom's published rules and procedures, including those relating to non-disclosure below.

Non-Disclosure

Parties (complainants, the BBC, Ofcom and any directly affected third parties) may, unless otherwise indicated, make public the fact that a complaint has been made or that Ofcom is investigating a case. They may also use any information which is already in the public domain.

However, parties should not disclose any correspondence, documents or other material concerning the complaint during the course of the investigation.⁴⁵

⁴⁴ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>.

⁴⁵ Ofcom is obliged to meet various statutory obligations relating to the disclosure of information (for example, under the Freedom of Information Act 2000 and the Environmental Information regulations 2004). Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations.

Failure to follow this requirement may result in Ofcom ceasing to consider the party's representations.

This does not limit what Ofcom can publish in its decision at the end of the investigation.⁴⁶

Time limits

- 1.48 Complainants and the BBC should keep to the time limits specified in these Procedures. However, Ofcom may consider it appropriate (in the interests of fairness and/or properly to carry out an investigation) to amend or adapt the time limits set out above in a particular case. Any party seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.

Sanctions

- 1.49 In accordance with the Charter, Ofcom may impose a financial penalty on the BBC⁴⁷, and direct the BBC or accept undertakings from the BBC to take such steps we consider will remedy the failure to comply and/ or ensure the BBC complied with its requirements properly in the future. Ofcom will not impose a sanction on the BBC unless it has given the BBC a reasonable opportunity of making representations about the matters appearing to Ofcom to provide grounds for the imposition of the sanction.
- 1.50 Accordingly, where Ofcom determines that there has been a breach (or breaches) of a relevant requirement, Ofcom may determine that it justifies consideration of a sanction against the BBC. Ofcom will make such a determination clear in its Decision and the Procedures set out below will normally apply.
- 1.51 The imposition of a sanction is a serious matter. Ofcom may, following due process, impose a sanction if it considers that the BBC has seriously, deliberately, repeatedly⁴⁸ or recklessly breached a relevant requirement.

Decision making

- 1.52 Decisions on sanction under these Procedures will be made (and where relevant, Preliminary Views taken) by one or two (depending on the nature of the breach) senior members of the Ofcom Executive who have been given appropriate delegated authority by the Ofcom Board, one of whom will be the final decision maker on the breach of a relevant requirement.
- 1.53 A decision maker in a sanctions case will not have been involved in the investigation of the breach of the relevant requirement, up to and including the preparation of the Preliminary View on the breach.

⁴⁶ Ofcom may (in investigating and publishing its decision) withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the BBC will be notified that relevant material has been withheld and the reasons why.

⁴⁷ The amount of any penalty that may be imposed must not exceed the maximum amount specified in section 198(5) of the Communications Act 2003 i.e. £250,000.

⁴⁸ A repeated breach of a relevant requirement, would include, for example: a repeat of the breach of the same requirement as has already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

- 1.54 When Ofcom writes to the broadcaster in accordance with paragraph 1.56 below, it will identify the decision maker(s).

Consideration of sanctions

- 1.55 The consideration of a sanction follows a decision by Ofcom that the BBC has breached a relevant requirement. A case will normally be considered for the imposition of a sanction when Ofcom considers that the BBC has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
- 1.56 Ofcom aims to conclude the consideration of the imposition of a sanction within 60 working days from the date Ofcom records the breach(es) of a relevant requirement(s). However, the circumstances of individual cases can vary considerable and completion may in some cases take longer.
- 1.57 If Ofcom consider that a sanction may be appropriate, it will write to the BBC with the following information, as appropriate:
- a) details of the breach(es);
 - b) comments on any issue raised by the BBC that is material to the case;
 - c) details of any relevant BBC cases on which Ofcom has already adjudicated;
 - d) details of the BBC's recent compliance history;
 - e) details of Ofcom's Preliminary View that a sanction may be appropriate;
 - f) details of Ofcom's Preliminary View on the type and level of any sanction considered to be appropriate and proportionate;
 - g) a summary of the material on which it has relied in reaching its Preliminary View; and
 - h) a copy of the relevant documentation⁴⁹ that Ofcom has taken into account.
- 1.58 Where, at this stage, Ofcom's Preliminary View is that the appropriate sanction should include a financial penalty, it will, as appropriate, consider the penalty in accordance with the Penalty Guidelines published by Ofcom at: https://www.ofcom.org.uk/data/assets/pdf_file/0032/49685/penalty_guidelines_2015.pdf.

BBC representations

- 1.59 Ofcom will provide the BBC with an opportunity to make representations on Ofcom's Preliminary View that a sanction may be appropriate.

Written representations

- 1.60 The BBC will have the opportunity to make written representations on Ofcom's Preliminary View that a sanction may be appropriate and on the type and level of any

⁴⁹ Ofcom may withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the BBC will be notified that relevant material has been withheld and the reasons why.

sanction being considered. The period for written representations will be 15 working days, unless otherwise specified. In some circumstances, Ofcom may, if it considers appropriate, seek further information or representations from the BBC.⁵⁰

Oral representations

- 1.61 In addition Ofcom will offer the BBC the opportunity to attend an oral hearing to make representations on the matters referred to in Ofcom's Preliminary View. Ofcom will normally give the BBC at least 15 working days' notice of the date for making such representations. The hearing of oral representations will be in private and may take place in any UK nation, as appropriate. The hearing will be transcribed and the transcript will be provided to the BBC. The BBC may bring legal advisers to the oral hearing to assist in preparing its oral representations, although Ofcom may ask that the BBC limited the number of persons attending the oral hearing on its behalf to a reasonable number.
- 1.62 The procedure for making oral representations will be at the discretion of Ofcom. Ofcom will write to the BBC in advance of the date of the hearing, to set out the procedure to be followed on the day.

Disposal

- 1.63 After consideration of written and/or oral representations from the BBC, Ofcom may decide that no sanction is appropriate in a particular case. Where this is the case, the BBC will then receive written notification to this effect.

Sanctions decision

- 1.64 If, after considering all the evidence and representations from the BBC, Ofcom believes that a sanction is appropriate, it shall consider and decide which of the available sanctions is appropriate and reach a decision to that effect. If Ofcom decides that the sanction should include a financial penalty, it will, as appropriate, have regard to the Ofcom Penalty Guidelines published at: https://www.ofcom.org.uk/_data/assets/pdf_file/0032/49685/penalty_guidelines_2015.pdf.

Publication of Sanction Decision

- 1.65 The Sanction Decision, with a statement of reasons, will be sent to the BBC one working day before its publication.
- 1.66 Ofcom will publish its decision on its website. A summary of the Sanction Decision will normally be published in Ofcom's Broadcast and On Demand Bulletin at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.

⁵⁰ Under Article 47 of the BBC Charter, Ofcom may require the BBC and any other person to provide information for the purposes of the carrying out by Ofcom of their functions.

Non Disclosure

- 1.67 It is essential to the integrity of Ofcom's processes and its ability to regulate fairly that all parties abide by Ofcom's published rules and procedures, including those relating to non disclosure below⁵¹.

Non Disclosure

Ofcom expects the BBC to keep all information, correspondence and documents relating to sanctions cases strictly confidential, unless already in the public domain. Ofcom expects the BBC to keep strictly confidential any information provided to it by Ofcom as part of the sanctions process, including any provisional indication/decision on the type and level of any sanction that may be imposed⁵².

This does not limit what Ofcom can publish in its decision at the end of the investigation.

Time limits

- 1.68 The BBC should keep to the time limits specified in these Procedures. However, Ofcom may consider it appropriate (in the interests of fairness and/or to properly to make decisions relating to sanctions) to amend or adapt the time limits in a case. If the BBC requires an extension to a time limit it should explain in writing to Ofcom why it believes the relevant time limit should be extended.

⁵¹ Ofcom is obliged to meet various statutory obligations relating to the disclosure of information (for example, under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004). Information provided to Ofcom may need to be disclosed by Ofcom in order to meet such obligations.

⁵² Ofcom may withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the BBC will be notified that relevant material has been withheld and the reasons why.