

Ofcom

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for everyone

**[DRAFT] Procedures for
investigating breaches of
competition-related conditions in
Broadcasting Act licences**

Guidelines

Consultation

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About this document

Ofcom is the independent regulator and competition authority for the UK communications industries. In this role, we may need to take enforcement action in the interests of citizens and consumers, and where appropriate to promote competition.

These Guidelines set out how Ofcom will investigate compliance with and approach enforcement of competition-related conditions in Broadcasting Act licences.

However, they do **not** apply to the following:

- Enforcement of any other conditions in relation to broadcasting licences.
- Enforcement in relation to the BBC or video on demand.
- Enforcement of the Competition Act 1998.
- Enforcement of regulatory requirements relating to telecoms and postal services
- Enforcement of consumer protection legislation
- Compliance with undertakings given to Ofcom under Part 4 of the Enterprise Act 2002.
- Complaints from individual consumers about communications services or postal services.

If you have a complaint you wish to make as a consumer, viewer or listener about a communications provider, broadcaster or postal services provider, this guidance is unlikely to be relevant to you. Details of how to make a complaint can be found on the Ofcom website at <https://www.ofcom.org.uk/complain-to-ofcom>.

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Section 1

Introduction

1.1 Ofcom is the independent regulator, competition authority and designated enforcer of consumer law for the UK communications industries. In this role, we may need to take enforcement action in the interests of citizens and consumers, and where appropriate to promote competition.

What do these Guidelines cover?

1.2 These Guidelines set out how Ofcom will approach enforcement of competition-related conditions in licences under the Broadcasting Acts 1990 and 1996 (the “Broadcasting Acts”).

1.3 In particular, these Guidelines apply to enforcement of the following types of obligations under Broadcasting Act licences:

- Conditions in Broadcasting Act licences imposed under section 316 of the Communications Act 2003 (the “Communications Act”) to ensure fair and effective competition in the provision of licensed broadcast services. This includes requirements pursuant to such conditions to comply with:
 - Codes of practice approved by Ofcom for the purpose of securing fair and effective competition – for example the provisions of the Code of Practice for Electronic Programme Guides (“EPG”) that sets out practices to ensure fair and effective competition and which apply to EPG providers;¹ and
 - Directions given by Ofcom for the purposes of ensuring fair and effective competition.
- Conditions in television and radio multiplex licences imposed under sections 12(1)(e) and (f) and 54(1)(e) and (f) of the Broadcasting Act 1996 (respectively) for the purposes of securing:
 - that the multiplex licence holder does not show undue discrimination either against or in favour of a particular person or class of persons in contracting or offering to contract for the broadcasting of the relevant digital services on the multiplex (i.e. digital radio or television services or digital additional services);
 - that the multiplex licence holder does not, in any agreement for the broadcast of relevant digital services on the multiplex (i.e. digital radio or television services or digital additional services) which entitles the use of a specified amount of digital capacity on the multiplex, restrict the other party’s

¹ The *Code of Practice on Electronic Programme Guides*, available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0031/19399/epgcode.pdf, also sets out practices to be followed by EPG providers to (i) give appropriate prominence for public service channels and (ii) provide features and information needed to enable EPGs to be used by people with disabilities affecting their sight or hearing or both. In relation to enforcement of those provisions of the EPG Code, Ofcom will generally apply the *General procedures for investigating breaches of broadcast licences*

freedom to make arrangements with another person as to the use of that digital capacity (i.e. ‘sub-let’ that capacity), subject to certain exceptions.

- 1.4 Ofcom has set out in separate guidance the procedures it will follow in relation to enforcement of other conditions in Broadcasting Act licences. Specifically:

Category of regulatory requirement	Specific procedure
Content standards objectives set out under section 319 of the Communications Act 2003 and applied in the Ofcom Broadcasting Code and other codes ²	<i>Procedures for investigating breaches of content standards for television and radio³</i> <i>Procedures for the consideration of statutory sanctions in breaches of broadcast licences⁴</i>
Fairness and/or privacy requirements set out under Part 5 of the Broadcasting Act 1996 and applied in the Ofcom Broadcasting Code	<i>Procedures for the consideration and adjudication of Fairness & Privacy complaints⁵</i> <i>Procedures for the consideration of statutory sanctions in breaches of broadcast licences</i>
All other categories of regulatory requirement imposed on broadcasters through their Broadcasting Act licences ⁶	<i>General procedures for investigating breaches of broadcast licences⁷</i> <i>Procedures for the consideration of statutory sanctions in breaches of broadcast licences</i>

- 1.5 In light of the nature of the types of issues which are likely to be considered when assessing compliance with competition-related licence conditions relating to fair and effective competition, there may be certain differences in the process Ofcom expects to follow in deciding whether to investigate and in conducting an investigation into compliance with fair and effective competition-related conditions. These Guidelines set out the process we would normally expect to follow in such cases.

² Other codes include the *Cross-Promotion Code* and the *Code on the Scheduling of Television Advertising*. These codes and the Broadcasting Code can be found on Ofcom’s website <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

³ [Link to be inserted when available]

⁴ [Link to be inserted when available]

⁵ [Link to be inserted when available]

⁶ The relevant requirements include, for example, requirements placed on broadcasters to broadcast certain types of content (e.g. radio formats and delivery of news and regional programming quotas), provide Ofcom with information it has requested, pay fees, comply with the *Code of Television Access Services*, the *Code on Sports and Other Listed and Designated Events*, the *Code on Electronic Programme Guides* and technical codes for television and radio

⁷ [Link to be inserted when available]

Status of these Guidelines

- 1.6 These Guidelines take effect from [**DATE**]. They set out Ofcom's general approach to enforcement in the areas covered by the Guidelines. They do not have binding legal effect, and they are designed to be flexible. Where we depart from the approach set out in these Guidelines, we will be prepared to explain why.
- 1.7 These Guidelines are not a substitute for any regulation or law and are not legal advice.

Section 2

Why and how Ofcom opens cases

Why Ofcom opens cases

- 2.1 Ofcom's principal duties in carrying out our functions, as set out in section 3 of the Communications Act, are:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate, by promoting competition.
- 2.2 Taking action against non-compliance with statutory and regulatory requirements imposed in the interests of citizens and consumers is usually likely to further their interests by preventing or remedying consumer harm. It is also important that we take action in an efficient and effective way, that is evidence-based, proportionate, consistent, accountable and transparent, and targeted only at cases where action is needed. We cannot necessarily pursue every possible issue that comes to our attention and must make decisions about whether or not to open investigations by weighing up the likely benefits of conducting an investigation compared to the resources that would be required, and the comparative benefits of using those resources in other ways.
- 2.3 We make decisions about whether or not to open investigations on a case-by-case basis, having considered all the matters that appear to us to be relevant to whether or not we should do so. In doing so, we seek to exercise our discretion to target our action at the cases we think are most likely to produce good outcomes for citizens and consumers.
- 2.4 The matters we will generally consider include the following, so far as they are relevant to the case concerned:
- a) The risk of harm arising from/seriousness of the alleged conduct. For example:
 - The risk to the interests of citizens or consumers as a result of the alleged breach (including whether that risk is immediate or not and whether it is direct or indirect), and conversely the direct and indirect benefit to consumers of taking action (e.g. to deter similar conduct by others);
 - Whether the conduct is on-going;
 - Whether the allegation concerns conduct that is, or that appears to be, a repeated, intentional or particularly flagrant breach or infringement;
 - Whether the business which is under investigation has a history of similar breaches or infringements, or a demonstrated record of poor compliance;
 - b) The strategic significance of addressing the alleged conduct and whether we are best placed to act. For example:
 - Whether an investigation would help clarify the regulatory or legal framework for stakeholders;

- Whether the issue that has been identified directly relates to Ofcom's broader strategic goals or priorities (including those within Ofcom's Annual Plan);
 - Whether there are other alternative proceedings (for example, planned market reviews) that are likely to achieve the same ends, or deal with the same issues, as the potential investigation. This could include, for example, whether other agencies may be better placed to investigate the complaint; and
- c) The resource implications of conducting an investigation, for example, what resources (in particular what specialist resources) are required to conduct an investigation, given the need to do justice to the interests of all parties likely to be affected.

2.5 Where appropriate we will also consider other factors as well.

2.6 Before exercising our Broadcasting Act powers for a competition purpose (which includes exercising any of our powers to enforce and obligation imposed under section 316 of the Communications Act or giving a direction for the purposes of securing fair and effective competition in accordance with such a condition), we must consider if a more appropriate way of proceeding would be under the Competition Act 1998. Where we decide it is more appropriate to proceed under the Competition Act 1998 we will state our reasons for doing so.

Sources of information

2.7 Information which could trigger an investigation into compliance with a requirement could come to Ofcom's attention from a number of different sources. For example, Ofcom may consider opening an investigation:

- where a broadcaster comes to us to let us know that they believe they have or may have breached a fair and effective competition condition;
- in response to a complaint made to us by an industry stakeholder or whistleblower;
- in response to information provided to us by other bodies (for example, where other regulatory bodies, MPs, consumer organisations or the press draw to our attention complaints they have received about a particular issue);
- where we identify a particular concern through other areas of our work, for example, as a result of considering another licensing issue.

Complaints and whistleblowing

2.8 As noted above, some of our investigations begin because we have received a specific complaint about potential non-compliance by a business with a relevant regulatory requirement from another business or a trade organisation.

2.9 Guidance for stakeholders who wish to make a complaint is set out in the document "*Advice for complainants: Submitting a complaint to Ofcom*", available here [*Link to be inserted when available*].

2.10 In addition, 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 (or their former organisation) and where they have been unable to raise or resolve those concerns internally.⁸ Such disclosures can be made in confidence to the Secretary to the Corporation. Some further guidance for potential whistleblowers is also set out in our *Advice for complainants* document.

Enquiry phase

- 2.11 When considering whether to open an investigation, Ofcom will generally first carry out an enquiry phase, during which we will give the broadcaster whose conduct we are considering the opportunity to comment and provide relevant information to assist us in deciding whether to open an investigation. However, we may decide not to have an enquiry phase if we consider that we already have sufficient information to decide whether to open an investigation or not, for example as a result of previous engagement with the broadcaster, or where the scale of any possible consumer harm appears too low to merit the resource required to investigate. In some cases, we may also not have an enquiry phase where there are reasons to proceed to an investigation more quickly.
- 2.12 We do not make a decision on whether or not there has been a breach of a requirement or the merits of a complaint during this phase of our assessment -the purpose of this phase is to decide whether we should commit our resources to an investigation of the relevant matters in all the circumstances, having considered all the relevant factors, as explained in paragraph 2.4 above.
- 2.13 When we open an enquiry, we will notify the business whose conduct we are considering and any complainant, and will generally provide the broadcaster, and any complainant, with contact details for the case leader, who acts as the main point of contact during an enquiry and any subsequent investigation (as discussed further in Section 3 below).
- 2.14 Where we open an enquiry following receipt of a complaint from a stakeholder, we will generally tell the broadcaster of the possible investigation we are doing so on the basis of a complaint we have received and will generally share a non-confidential version of the complaint submission with it for comment.⁹ 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 whistleblowers.
- 2.15 We will aim to complete an enquiry as quickly as possible, but the length of time that this will take is likely to vary on a case-by-case basis based on the issues under consideration (for example where we are also considering whether it is more appropriate to open a case under the Competition Act 1998, an enquiry is likely to take longer). We will generally inform the broadcaster of the possible investigation

⁸ <https://www.ofcom.org.uk/about-ofcom/policies-and-guidelines>

⁹ There may also be cases in which we consider that it is not appropriate to do this, for example, where we consider this may prejudice the conduct of any subsequent investigation. We may also decide not to share a non-confidential version of the complaint with the business whose conduct we are considering at this stage in cases where we consider that we already have sufficient information to decide whether or not to investigate without obtaining comments from it at this stage. In such a case, and in the event that Ofcom decides to open an investigation, we would share a non-confidential version of the complaint submission with the broadcaster at that stage (unless doing so may prejudice our ability to carry out an investigation, in which case we may delay doing so until an appropriate later point of time).

and any complainant how long we expect the enquiry phase to take when we begin this process and to keep them updated on progress.

- 2.16 We do not generally exercise our formal information gathering powers during an enquiry, although as noted above we will normally give the broadcaster whose conduct we are considering investigating an opportunity to comment on our concerns and may invite them to provide relevant information in response. In some cases, we may meet with the broadcaster and/or a complainant if relevant.
- 2.17 We also do not publish details of enquiries, or comment publicly on enquiries.

Informal resolution

- 2.18 In some cases, Ofcom may be able to resolve an issue raised in a complaint or identified through compliance monitoring through informal contact with the broadcaster whose conduct we are considering, including during an enquiry phase where relevant. For example, we may be satisfied that a broadcaster has taken, or has offered assurances that it will take, appropriate steps to address any concerns we have identified, such that there is no need for further action (although there may be a period of compliance monitoring). In such cases, we would normally write to the broadcaster whose conduct we have been considering and any complainant if there is one to explain the basis on which we have decided not to proceed to formal enforcement action, and the circumstances in which we might reconsider the need to take formal enforcement action in future if relevant (for example, in the event that the organisation did not take the steps which it had said that it would or we received further evidence of a potential compliance issue).
- 2.19 Such informal action would not generally involve Ofcom taking any decision on the merits of a complaint or about whether or not any regulatory or legal provision has been breached.
- 2.20 We may publish details of informal assurances that have been given about the steps the relevant business will take to address the issue, for example where we consider this would be in the interests of potentially affected customers or consumers more generally.

Next steps following Ofcom's decision on whether to open an investigation

- 2.21 A senior member of Ofcom's staff with appropriate Board-delegated authority will decide whether to open an investigation. Typically, this would be the person who would be responsible for overseeing the investigation.
- 2.22 Where we decide not to open an investigation following the enquiry phase, we will normally inform the broadcaster, and the complainant if there is one, but will not usually give them the opportunity to comment before we take our final decision.
- 2.23 Ofcom will not usually publicise a decision not to open a formal investigation unless the fact that a complaint has been made has been put into the public domain by either the complainant or the broadcaster whose conduct we were considering investigating, or a potential investigation is the subject of press speculation, and we consider fairness requires us to clarify the position.

- 2.24 If Ofcom decides to open an investigation, we will generally inform the broadcaster and any complainant by sending them each a case opening letter explaining the scope of Ofcom's investigation, who the case leader and case director are (as discussed further at paragraph 3.5 below), and next steps (although we may delay doing so if we consider it may prejudice our ability to carry out an investigation).
- 2.25 Shortly after sending the case opening letter(s), we generally also announce that we have opened an investigation on our website (although we may delay doing so if we think this could prejudice our ability to carry out an investigation). The case opening announcement would typically include the following details:
- the identity of the broadcaster;
 - the identity of any complainant;¹⁰
 - the regulatory provisions to which the investigation relates;
 - the scope of the investigation; and
 - the case leader's contact details.
- 2.26 Announcing the beginning of an investigation does not imply that Ofcom has formed any view about whether or not any licence condition or other relevant obligation has been breached.

¹⁰ If a complainant has a concern about being publicly identified on Ofcom's website, the complainant should raise this concern with us, ideally at the time of making its complaint submission. For the avoidance of doubt, Ofcom will not publish a copy of the complaint submission itself.

Section 3

Investigating

Introduction

3.1 This section sets out how Ofcom is likely to conduct an investigation. This includes guidance on Ofcom's likely engagement and contact with the broadcaster, complainant and third parties, and how we will gather information, publish information and deal with confidential information.

Engagement with Ofcom during the investigation

3.2 We seek to ensure that enforcement action is conducted in a fair, transparent and timely way, and that those we are investigating have a fair opportunity to respond to Ofcom's case as part of the administrative process. In order to conduct efficient and prompt investigations, we will give those we are investigating a fair opportunity, but no more than a fair opportunity, to make representations to us and engage with us during the course of an investigation. As set out in the relevant sections of this document, Ofcom may also request representations from and engage with complainants or other relevant third parties.

3.3 Where it would assist the investigation, we will be prepared to meet with the broadcaster we are investigating and complainants, and/or provide written or verbal updates. We will decide whether and when it is appropriate to do so on a case-by-case basis.

3.4 We explain in the following sections of these Guidelines the type of engagement that broadcasters we are investigating, complainants and third parties can generally expect to have with Ofcom at key points during the investigation.

Case team

3.5 At the outset of an investigation, Ofcom will usually¹¹ inform the broadcaster, and any complainant, of:

- who the case leader is - this is the person who will be their main contact at Ofcom for the case during the course of the investigation; and
- who the case supervisor is - this is the person who will be overseeing the investigation.¹²

3.6 At the same time, Ofcom may ask them to nominate a principal point of contact for communications about the investigation.

¹¹ As noted above, there may be circumstances in which we decide not to do this until a later point in the investigation, for example where we consider this could prejudice the conduct of any subsequent investigation, such as in cases where we may need to use our formal information gathering powers to obtain and preserve evidence prior to alerting the broadcaster.

¹² As explained at paragraph 4.3 below, the case supervisor would typically be the person responsible for deciding whether there are grounds for action and to issue a provisional breach notification.

- 3.7 We would update the broadcaster, and any complainant, if the case leader or case supervisor changes during the course of the investigation.
- 3.8 Details of the case leader for an investigation will also be set out on the relevant section of our website.

Timescales

- 3.9 Ofcom recognises that it is important for all stakeholders that if we open an investigation we complete it as soon as possible. However, while we always aim to conclude investigations as quickly as possible, we are generally unable to give an indication of the likely timescale involved in completing an investigation at the point when we open the investigation.
- 3.10 We will provide updates to the broadcaster and any complainant on the progress of investigations, including when we expect to reach a particular milestone, and will also provide updates where this changes.

Changing the scope of the investigation

- 3.11 We may widen the original scope of an investigation if we become aware of new issues that warrant investigation, or reduce the scope of an investigation if we decide that it is no longer appropriate to pursue particular aspects of the case. If we decide to change the scope of an investigation we will inform the broadcaster and the complainant (if there is one), and will update the notice on Ofcom's website.

Information gathering

- 3.12 Ofcom relies on accurate information, provided in a timely manner, to carry out efficient investigations. We may require the broadcaster to provide us with information to assist an investigation, or to assist us in deciding whether to open an investigation in accordance with the relevant condition of their licence.
- 3.13 If the broadcaster does not comply with a request to provide us with information, we may take enforcement action in accordance with our *General procedures for investigating breaches of broadcast licences*.¹³

Confidentiality

- 3.14 In accordance with our duties under the Communications Act, we are required to investigate and enforce in a transparent and accountable manner. Those duties must be balanced against the restrictions on disclosure contained in sections 26 and 393 of the Communications Act and the legitimate interest of parties in ensuring that confidential and commercially sensitive information is protected.
- 3.15 Ofcom will always consider whether disclosure of information about a particular business is necessary for the purpose of facilitating the carrying out of our enforcement functions. In particular, Ofcom may judge that that it is necessary to disclose information gathered from complainants or other stakeholders to the broadcaster in order to allow it to respond to Ofcom's case. Similarly, Ofcom may judge that disclosure of information gathered from the broadcaster to a complainant

¹³ [Link to be inserted when available]

and other stakeholders is justified in order to facilitate the carrying out by us of our functions.

- 3.16 Ultimately, it is for us to determine what is, and is not, appropriate to disclose within the relevant statutory framework. If Ofcom is proposing to disclose information which a party considers to be confidential, we will take reasonable steps to inform that party and will give it a reasonable opportunity to make representations on our proposal, before making a final decision on whether to disclose the information.
- 3.17 We may request that we are provided with a non-confidential version of a submission, if needed for the purposes of publication and/or disclosure. Such a non-confidential version should normally include suggested non-confidential summaries of information (for example “confidential details of contracts”) or ranges of numbers, rather than simply removing the confidential information.

Publicity

- 3.18 Ofcom is required to have regard to the principle under which regulatory activities should be transparent and accountable. Publicising the action we take can also usefully draw it to the attention of parties who have relevant information, can help deter non-compliance in future and educate others about what can go wrong. Consequently, publicising the investigations we are carrying out and our final decisions is an important part of carrying out our functions.
- 3.19 As explained at paragraph **Error! Reference source not found.** above, when we open an investigation we will typically publicise it on our website.
- 3.20 We will also publish updates regarding the progress of an investigation on our website (such when we issue a provisional breach notification, when we change the scope of an investigation, when we issue a final enforcement decision or when we close a case). This is explained in more detail in the relevant sections of these Procedures.
- 3.21 We do not agree the text of website updates with the broadcaster, or any complainant.
- 3.22 We will ordinarily inform the broadcaster shortly before (and no more than one working day before) publication on Ofcom’s website that we will be doing so, and provide them with a copy of the intended text for information at that stage.
- 3.23 Where we consider an announcement to be potentially market sensitive, we will generally inform the broadcaster after markets have closed, with publication on Ofcom’s website and via the Regulatory News Service at 7.00am the following morning, just before markets open. Where the broadcaster is a listed company in other jurisdictions, we will, where possible, seek to avoid publication during stock exchange hours in those jurisdictions.
- 3.24 There may be certain cases which we consider it would be inappropriate to discuss publicly, for example because they are particularly sensitive and/or publicity could have a detrimental impact on third parties. We would inform the broadcaster and any complainant if we intend to take this approach to an investigation in a relevant case. We would expect these cases to be exceptional.

Involvement of third parties

- 3.25 Ofcom may consider it necessary to seek input from other relevant third parties – for example, from competitors or customers of the broadcaster we are investigating, in order to assist us in reaching a decision on the case. Ofcom will involve third parties in an investigation to the extent necessary to carry out our functions fairly and effectively.

How to raise concerns with Ofcom

- 3.26 If the broadcaster or a complainant is dissatisfied with any aspect of the way in which Ofcom is proceeding, they should usually raise their concerns in writing with the case leader or case supervisor in the first instance.
- 3.27 Where engagement with the case leader / case supervisor does not resolve these concerns, the broadcaster or complainant may contact the office of Ofcom's Secretary to the Corporation (corporationsecretary@ofcom.org.uk) who will review their case.¹⁴

¹⁴ Further information on complaint escalations is set out on our website:
<https://www.ofcom.org.uk/about-ofcom/contact-us/complaints-about-ofcom>

Section 4

Investigation outcomes

Introduction

- 4.1 There are a number of possible outcomes in an investigation into a breach of a competition-related requirement in a Broadcasting Act licence:
- We may decide that there are grounds for action. In such cases, we will first provide to the broadcaster a provisional decision explaining the reasons why we are minded to find a breach of the relevant requirement(s) and the action that we propose to take as a result, and will give the broadcaster the opportunity to make representations before proceeding to take a final decision. This may result in a final enforcement decision, which may also include the imposition of a statutory sanction, such as a financial penalty, and/or, where we have power to do so, a direction requiring steps to be taken to remedy a breach or comply with the relevant requirement. In other cases, we may find that there has been a breach but that there is no need to impose a formal sanction.
 - We may decide that there is insufficient evidence of a breach, and close the case on that basis (potentially subject to a period of compliance monitoring).
 - We may decide to close a case without having taken a final decision on the merits of a case. For example, we may decide to close the case for administrative reasons, such as where we consider that it is no longer appropriate to pursue the case in light of the factors set out at paragraph 2.4 above. Examples of relevant factors we might take into account could be where we are satisfied that the conduct we were concerned about has now ceased and the broadcaster has taken appropriate action to remedy any harm or has given appropriate assurances that it will be remedied.
- 4.2 In some cases, we may be able to reach a settlement with the broadcaster as a way of resolving a case. The process for settlement is discussed in Section 5 below.

Decision making

- 4.3 The decision on whether there are grounds for pursuing formal enforcement action (in other words, whether to issue a provisional breach notification) 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 (the case supervisor).
- 4.4 Following the issue of a provisional breach notification and the receipt of any written submissions from the broadcaster (as explained further at paragraphs 4.5 to 4.14 below), Ofcom will nominate a final decision maker who will be responsible for deciding on the final outcome of the investigation. This will be 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 provisional breach notification.

The provisional breach notification

- 4.5 In cases where Ofcom's provisional view is that the broadcaster has not complied with the relevant competition-related requirement, Ofcom will notify the broadcaster of this finding, by providing it with a provisional breach notification. This is a provisional view only and may be subject to change in light of subsequent representations or material provided by the broadcaster (or complainants or other third parties where relevant) or any further evidence which comes to light.
- 4.6 If the broadcaster is a company, Ofcom will deliver the notification in hard copy to the Company Secretary¹⁵, copied by email to our main contact, unless it has agreed otherwise with us.
- 4.7 The provisional breach notification will set out Ofcom's reasoning for provisionally concluding that the broadcaster has breached the relevant competition-related requirement.
- 4.8 Ofcom will, as a general rule, include with any proposed breach finding a provisional determination of any statutory sanction we provisionally consider would be appropriate in the circumstances. The sanctions available to Ofcom in respect of a breach of a Broadcasting Act licence condition include:
- Financial penalties;¹⁶
 - Shortening the licence period¹⁷ or suspending the licence¹⁸ (where permitted);
 - Licence revocation.¹⁹
- 4.9 Where, at this stage, Ofcom provisionally concludes that it would be appropriate to impose a financial penalty, Ofcom will have regard to Ofcom's Penalty Guidelines²⁰ in making the provisional determination of penalty.
- 4.10 In cases where Ofcom has power to give a direction, such as a direction requiring the broadcaster to take such steps to ensure fair and effective competition and Ofcom

¹⁵ In most cases, it is a statutory requirement to service notice on the Company Secretary of a company.

¹⁶ The specific provision which empowers Ofcom to impose financial penalties for the breach of licence conditions will depend on the type of licence held. For example, in relation to television broadcasting: s.41(1) of the Broadcasting Act 1990 (in respect of Channel 3, Channel 4 or Channel 5), s.17 of the Broadcasting Act 1996 (television multiplex licences), s.23 of the Broadcasting Act 1996 (digital television programme service licences), s.237 of the Communications Act 2003 (TLCS licences), and in relation to radio broadcasting: s.110(3) of the Broadcasting Act 1990 (national or local analogue radio licences), s.59 of the Broadcasting Act 1996 (radio multiplex licences) and s.62 of the Broadcasting Act 1996 (digital sound programme service licences)

¹⁷ As noted above, the specific provision which empowers Ofcom to shorten a licence period will depend on the type of licence held and this sanction is only applicable in certain cases. These include under s. 41(1) and 110(1) of the Broadcasting Act 1990

¹⁸ This sanction is only applicable in certain cases, for example under s.110(1) of the Broadcasting Act 1990.

¹⁹ As noted above, the specific provision which empowers Ofcom to revoke a licence will depend on the type of licence held. These include: s.111 of the Broadcasting Act 1990 (in respect of most radio broadcasting licences), s.238 of the Communications Act 2003 (TLCS licences), s.42 of the Broadcasting Act 1990 (Channel 3, Channel 5, television multiplex licences and digital sound programme service licences). Note that licence revocation is not applicable to Channel 4.

²⁰ These are available here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0032/49685/penalty_guidelines_2015.pdf

provisionally concludes that it would be appropriate to give such a direction, as a general rule, the provisional breach notification will also set out details of the proposed direction.

- 4.11 Along with the provisional breach notification we will generally provide the broadcaster with copies of or access to the evidence we have relied upon in reaching the provisional breach notification. Wherever possible and appropriate, we would seek to do this by providing the broadcaster with copies of or access to the relevant documents in electronic form, but in some cases we may instead, or in addition, also provide hard copies. Where we have relied upon evidence provided to us by the broadcaster itself, rather than providing copies of the relevant documents, we may instead list these in a schedule so that it is easy for the subject to cross-refer to its own copies.
- 4.12 Confidential information in the provisional breach notification and any accompanying documents will be marked. We will redact (or withhold as relevant) confidential information where appropriate (although as noted in paragraph 3.15 above, we may consider that it is necessary to disclose information provided by a third party to the broadcaster in order to be fair to it).
- 4.13 Ofcom will not publish provisional breach notifications but we will generally publish an update on Ofcom's website. Our update will normally explain that we have issued a provisional breach notification, include a summary of the proposed breach findings and, where relevant, any proposed direction we are minded to impose. We may also explain that the broadcaster now has the opportunity to make representations on our proposed findings before we make our final decision.

Written submissions

- 4.14 The broadcaster will have the opportunity to make written representations to Ofcom on the proposed finding and on any proposed sanction (such as a proposed financial penalty) and/or proposed direction as relevant. Typically, Ofcom will give the broadcaster a period of at least four weeks for making written representations. Ofcom will give a longer period in more complex cases.
- 4.15 Where we consider that a complainant or another relevant third party stakeholder may have further information relevant to the proposed decision, we may also provide it with a non-confidential copy of the provisional decision for the purposes of giving it the opportunity to make written representations on it. In such cases, Ofcom would expect to give the complainant or the third party access to a non-confidential copy of the provisional decision subject to its entering into appropriate agreements with us limiting its use of and onward disclosure of the document. We will set deadlines for representations depending on the circumstances of the case. We will not usually provide the complainant or third parties with copies of or access to the underlying evidence relied on.

Further provisional breach notification

- 4.16 In some cases, new information or evidence may come to Ofcom's attention after we have issued a provisional breach notification and given the broadcaster the opportunity to comment on it, which leads us to consider making a material change to the nature of the proposed breach findings (such as evidence of a different or more serious breach) and/or increasing in the proposed level of penalty. In such circumstances, we would issue a further provisional breach notification on which we

would give the broadcaster the opportunity to comment as described above, before proceeding to reach a final decision.

Oral hearings

- 4.17 Ofcom will offer the broadcaster the opportunity to attend an oral hearing to make oral representations on matters referred to in the provisional breach notification, which will be held after any written submissions have been provided.
- 4.18 The oral hearing will usually be held at the Ofcom offices where the investigating case team is based and will be chaired by the final decision maker. The case supervisor and members of the case team may also be present and may comment during the course of the hearing. The hearing will be transcribed and the transcript will be provided to the broadcaster.
- 4.19 The broadcaster may bring legal advisers or other relevant expert advisers to the oral hearing to assist in presenting its oral representations, although Ofcom may ask that the broadcaster limits the number of persons attending the oral hearing on its behalf to a reasonable number.
- 4.20 Complainants and other third parties will not usually be invited to attend the oral hearing.

Process for reaching a final decision

- 4.21 Following the oral hearing and, having considered all of the relevant evidence and any representations, the final decision maker will take a final decision on the case.
- 4.22 The possible outcomes at this stage are that:
- a) Ofcom issues a final decision confirming a finding of a breach of the relevant competition-related requirement. The final decision will set out Ofcom's reasons for concluding that the broadcaster has breached the relevant requirement, and the evidence Ofcom has relied on. Where relevant, it will also:
 - i) explain any statutory sanction Ofcom has imposed on the broadcaster such as a financial penalty (including the amount of any penalty);²¹ and/or
 - ii) set out any required action that Ofcom has directed the broadcaster to take, for example to secure fair and effective competition.
 - b) A decision is taken that, in light of the representations received and/or review of further evidence, the proposed findings in Ofcom's provisional breach notification cannot be maintained, as there is insufficient evidence of a breach; or
 - c) Ofcom no longer considers it appropriate to continue an investigation, taking into account the factors set out in paragraph 2.4 above.²² For example, we may decide that significant further investigation would be needed to decide whether to issue a final enforcement decision and that, due to other urgent or important work, our resources could be targeted more appropriately at other cases.

²¹ Specific considerations apply in connection with licence revocation, as discussed at paragraph 4.27 below.

²² In these circumstances, Ofcom would not reach a decision on the merits of the case.

- 4.23 Ofcom will notify the broadcaster and the complainant of its final decision. If the broadcaster is a company, Ofcom will deliver the notification in hard copy to the Company Secretary,²³ copied by email to our main contact, unless the subject of the investigation has agreed otherwise with us.
- 4.24 If Ofcom intends to close the case because we think there is insufficient evidence of a breach or we no longer think it is appropriate to continue an investigation, we would follow the process as set out at paragraphs 4.28 to 4.33 below.

Publication of final breach decisions

- 4.25 Once the final decision has been taken and notified to the broadcaster, Ofcom will close the case and update the details of the case on Ofcom's website. This will generally include a summary of the breaches Ofcom has found and details of any penalty and/or other measures imposed.
- 4.26 A non-confidential version of a final breach decision will be published on Ofcom's website once we have finalised the relevant redactions of any confidential information. We will generally inform the broadcaster in advance of the intended date of publication of the final decision.

Licence revocation

- 4.27 In cases where Ofcom issues a final breach decision and considers that the sanction to be imposed should be revocation of the licence, we will follow the statutory provisions governing the revocation of that licence.²⁴ In the majority of cases, this will require Ofcom to serve a notice indicating that the licence will be revoked if the steps specified in the notice are not taken. If, at the end of the period specified in the notice, Ofcom is satisfied that the specified steps have not been taken and that it is necessary in the public interest to revoke the licence, it shall serve a notice revoking the licence.²⁵ The notice revoking the licence takes effect when it is served on the broadcaster.

Investigations that do not lead to a breach decision

- 4.28 If the relevant decision maker²⁶ concludes that Ofcom should not take any further action, we will close the case. As noted above this might be on the basis that:
- there is insufficient evidence of a breach; or
 - we no longer consider it to be appropriate to pursue further enforcement action without having come to a decision on the merits of a case.

²³ As noted above at footnote 15, in most cases, it is a statutory requirement to service notice on the Company Secretary of a company

²⁴ See, for example, sections 42 and 111 of the Broadcasting Act 1990 and sections 238 and 239 of the Communications Act.

²⁵ The precise procedure we will follow will depend on the relevant statutory provisions. For example, the provisions may require the broadcaster to be given a second opportunity to make representations before a notice of revocation is served.

²⁶ Depending on the stage at which this decision is reached, this may be the person responsible for deciding whether there are grounds for action, who, as noted above, will typically be the person responsible for overseeing the investigation, or it may be the final decision maker.

- 4.29 In both cases, we would typically follow the same process.
- 4.30 In the majority of cases, a case closure decision of this type is likely to be a brief statement indicating case closure and the basis on which we have closed the case. We would expect to publish this on Ofcom's website. In some cases, we may also publish a reasoned case closure document on Ofcom's website, if there is good reason to do so, for example if we think it would be helpful for all stakeholders to clarify our interpretation of a particular licence condition.
- 4.31 In certain cases, we may provide an opportunity for relevant stakeholders to comment before we finalise our decision to close the case – for example where the investigation was initiated following a complaint from a stakeholder, which may have further information relevant to the proposed decision.
- 4.32 In cases where we do not provide the opportunity to comment in advance of the final case closure decision being taken we will inform the broadcaster and the complainant in advance of publishing the case closure notice on Ofcom's website.
- 4.33 A non-confidential version of a reasoned case closure decision will be published on Ofcom's website once we have finalised the relevant redactions of any confidential information, and we will generally inform the broadcaster in advance of the intended date of publication.

Compliance monitoring

- 4.34 Where Ofcom has taken enforcement action or closed a case having accepted assurances we may decide at the end of the investigation to "put it into compliance". The purpose of the compliance phase is to ensure that the broadcaster does not repeat behaviour that Ofcom has deemed to breach relevant requirements and that it complies with any direction, undertakings or commitments given.
- 4.35 The process that we follow during the compliance phases will differ from case to case. We may use gather information from the broadcaster to obtain data that can be used to measure compliance.
- 4.36 The length of the compliance phase will depend on the circumstances of the case and the measures that are to be monitored. Generally, Ofcom will not grant extensions to any deadline set for compliance with a direction, unless we receive an application prior to the expiry of the deadline together with an explanation of why the deadline should be extended including supporting evidence.
- 4.37 Once we consider that compliance has been established, we will close the case and update Ofcom's website accordingly.

Section 5

Settlement procedure

Introduction

- 5.1 In some cases, Ofcom may consider that it is appropriate to settle an investigation into a breach of a competition-related requirement. Settlement is a voluntary process in which the broadcaster admits it has breached relevant regulatory requirements and accepts that the remainder of the investigation will follow a streamlined administrative procedure. In such cases, Ofcom will impose a reduced penalty on the broadcaster in light of its co-operation and the resource savings involved in following a streamlined administrative procedure.
- 5.2 Those who we are investigating are not under any obligation to enter into settlement discussions or to settle, and Ofcom has broad discretion to decide whether a case is appropriate for settlement or to agree to settlement.
- 5.3 Settlement is not the same as resolving a case by giving assurances to change conduct which could lead to case closure without resulting in a final enforcement decision (as described in Section 4). It is a process for resolving a regulatory investigation which leads to a formal, legally binding regulatory decision.
- 5.4 Settlement discussions are not a negotiation with Ofcom about what Ofcom breaches Ofcom might be prepared to find or not to find – for example, it would not involve discussing whether Ofcom might be prepared to drop a more serious breach on the basis that a business is prepared to admit to a less serious breach. Nor are they negotiations about the level of the penalty which Ofcom would impose.
- 5.5 Settlement discussions are not equivalent to the type of discussions which take place between parties to litigation or potential litigation on a “without prejudice” basis for the purposes of seeking to resolve or avoid litigation:
- As noted above, where successful, settlement discussions will result in a formal, legally binding regulatory decision, which is likely to refer to the fact that settlement has been agreed and would reflect the substance of any admissions made by the broadcaster for the purposes of the settlement.
 - As explained further below, in the event that settlement discussions break down, the case would revert to the usual process and the content of any settlement discussions would not be revealed to the final decision maker.
 - However, any additional documentary evidence provided during the settlement discussions would go onto the case file and could be taken into account by Ofcom for the purposes of our final enforcement decision.
 - In addition, Ofcom may follow up any new issues of regulatory concern which come to light during settlement discussions.

Requirements for settlement

- 5.6 As a minimum, Ofcom will require the broadcaster to:

- Make a clear and unequivocal admission of liability in relation to the nature, scope and duration of the breach. This would need to reflect Ofcom's position on the nature of the breaches we are minded to find and the appropriate level of penalty (as explained further below).
- Cease the contravening behaviour immediately from the date it enters into settlement discussions with Ofcom and refrain from engaging again in the same or similar contravening behaviour.
- Confirm that it accepts that there will be a formal and published finding of breach against it, it will pay a penalty set out at a maximum amount and will take any steps required to comply with the relevant competition-related requirements and to secure fair and effective competition (if relevant).
- Confirm that it accepts that it will no longer benefit from the settlement discount if it appeals the decision.
- Confirm that it will accept a streamlined administrative process. This will be decided on a case-by-case basis depending on the stage at which a settlement agreement is reached, but would include no written representations (except in relation to manifest factual inaccuracies) where settlement is concluded prior to a provisional breach notification being issued, and no oral hearing. In addition, the person responsible for deciding whether to issue a provisional breach notification would also be responsible for the final decision in a settlement case.

How does Ofcom decide whether a case is suitable for settlement?

- 5.7 Although there may be cases in which settlement is not appropriate, Ofcom may consider settlement for any investigation in which we have reached a stage where we believe that we have a sufficient basis to make a provisional finding of breach and come to a preliminary view on the appropriate sanction, including an appropriate level of penalty.
- 5.8 Ofcom will have regard to its statutory duties in deciding on whether it should settle a case on the basis of the admissions which the broadcaster of an investigation is prepared to make. Ofcom will also consider other factors such as the likely procedural efficiencies and resource savings that can be achieved through settlement, taking into account factors including the stage at which settlement is initiated, whether settlement would result in shortening the case timetable and a reduction in resources, and whether settlement is likely to be reached in a reasonable timeframe.

Settlement discounts

- 5.9 Where settlement discussions result in a final enforcement decision being issued, that decision will contain the penalty amount, which will include a settlement discount. Our aim will be to conclude the settlement process as swiftly as possible. In line with this aim, the level of the discount will depend on when settlement is reached. The earlier the settlement, the greater the discount available, as the resource savings that Ofcom could achieve would be greater.
- 5.10 We would normally expect this discount to be:

- up to 30% for settlement discussions which are successfully concluded before the provisional breach notification is issued;
 - up to 20% for settlement discussions which are successfully concluded after the provisional breach notification is issued but prior to written representations being received; or
 - up to 10% for settlement discussions which are successfully concluded after the provisional breach notification is issued and after written representations are received.
- 5.11 Where we are concerned that the process is not progressing as swiftly as possible due to delays or inefficiencies caused by the broadcaster or that it is not showing its full co-operation with the settlement process, Ofcom is likely to bring settlement discussions to an end or reduce the discount on account of the time taken and resources used. We would give the broadcaster notice that we are minded to do so at that point.
- 5.12 Ofcom also recognises that in some cases broadcasters may proactively contact us to let us know about a potential breach of a regulatory requirement, may voluntarily take significant steps to address compliance following a breach of a regulatory requirement and/or to remedy the harm caused, and may provide us with significant co-operation in advancing our investigation (for example, providing us with relevant documents and evidence as a result of having undertaken their own internal investigations). In such cases, we would expect to take this co-operation into account in deciding on an appropriate level of penalty, in accordance with our Penalty Guidelines, whether or not the case results in a successful settlement in accordance with this process. The settlement discount is intended to reflect resource savings achieved by Ofcom as a result of following the settlement process, and would be taken into account in addition to any other forms of co-operation provided to Ofcom during the course of the investigation.

Decision making in a settlement case

- 5.13 The decision maker in a settlement case will typically be the person responsible for deciding whether there are grounds for action and to issue a provisional breach notification, and therefore will usually be the person responsible for overseeing the investigation (the case supervisor). The relevant decision maker will then typically oversee settlement discussions. In contrast to our usual process, we would expect this decision maker to also be responsible for taking the final decision on the case in the event that settlement discussions are successful.

Process

- 5.14 If the broadcaster wishes to discuss the possibility of exploring settlement, it should approach the case leader or case supervisor in the first instance.
- 5.15 While we will engage positively with a broadcaster that indicates an early willingness to settle, in order for us to engage in settlement discussions, we will need to have reached a stage in our analysis of the available evidence where we are able to come to a provisional view on the nature of the breaches and an appropriate sanction (or sanctions), including an appropriate level of penalty, and can engage meaningfully with the broadcaster about our position during settlement discussions. We may

therefore expect a broadcaster wishing to engage in early settlement discussions to help speed up the process by providing information in the meantime.

- 5.16 Settlement discussions will generally be conducted orally by members of the case team, involving others as appropriate in any particular case (for example, a senior legal director).
- 5.17 As noted at paragraph 5.10 above, the level of discount on the level of penalty as a result of settlement will depend on the stage at which settlement is successfully concluded. There are three main stages at which a settlement may be reached:
- Prior to a provisional breach notification being issued;
 - Following a provisional breach notification being issued, but prior to the broadcaster making written representations in response; or
 - Following a provisional breach notification being issued, and after the broadcaster has made written representations in response.
- 5.18 In the event that settlement discussions are unsuccessful and the broadcaster wishes to seek further settlement discussions at a later stage of the process, it remains open for it to do so. However, as noted above, it is at Ofcom's discretion whether and on what bases to enter into settlement discussions at any stage of the process. We explain at paragraphs 5.31 to 5.35 what will generally happen in the event that settlement discussions break down.

Settlement prior to a provisional breach notification

- 5.19 If the broadcaster indicates a willingness to consider settlement at this stage, and Ofcom considers this to be an appropriate case in which to pursue settlement, Ofcom will send to the broadcaster a summary statement of facts and initial findings for the purposes of the settlement discussions, which would also set out a provisional level of penalty which Ofcom would be minded to impose on that basis, including the discount for the broadcaster's co-operation.²⁷
- 5.20 The broadcaster will be asked if it would be prepared in principle to agree to the settlement requirements and make admissions on the basis of the statement of facts and initial findings. The timeframe for doing so will be set on a case-by-case basis having regard to possible resource savings through the settlement process. Ofcom would then take a view as to whether it is likely to be productive to engage in further settlement discussions on that basis.
- 5.21 In the event that the broadcaster is not prepared to agree to a settlement on the basis of the position set out in the summary statement of facts, it is unlikely to be appropriate to pursue settlement at this stage and Ofcom would expect to proceed to issue a provisional breach notification in accordance with its usual process. If the broadcaster wishes to seek further settlement discussions at a later stage of the process (subject to Ofcom also considering this to be appropriate), it remains open for it to do so, although a lower settlement discount would then apply.

²⁷ That discount would reflect the discount that Ofcom would be minded to apply to the penalty were settlement discussions successful and concluded swiftly. Were Ofcom minded to reduce the discount at any point on account of the time taken and the resources used in the discussions, we would give the broadcaster notice of our intention to do so.

Settlement following a provisional breach notification and prior to written representations

5.22 In the event that the broadcaster is in principle prepared to agree to the settlement requirements and admit to the breaches as set out in the provisional breach notification, it may inform Ofcom that it wishes to enter into a settlement on that basis. In such a case, we would expect that the broadcaster would not make written representations on the provisional breach notification (except in relation to manifest factual inaccuracies). We would expect to set a deadline for the broadcaster to indicate to Ofcom its willingness to seek to settle the case on this basis at the time the provisional breach notification is issued.

Settlement following a provisional breach notification and following written representations

5.23 In the event that the broadcaster wishes to make written representations on the provisional breach notification (which are more extensive than manifest factual inaccuracies), it may indicate to Ofcom that it wishes to enter into settlement discussions after doing so.

5.24 Ofcom would consider any written representations made to it in line with our usual process, including any representations as to the level of any penalty, before deciding whether or not to engage in settlement discussions and on what basis. As noted above, settlement discussions are not a negotiation. Therefore, in the event that we consider it appropriate to engage in settlement discussions after considering the written representations from the broadcaster, we would expect to provide it with a written summary of our revised position for the purposes of initiating settlement discussions. This would include setting out:

- the breaches we remain minded to find; and
- an indication of what level of penalty we would be minded to impose, taking into account our revised assessment of the nature of the breaches and after having applied a discount to reflect the broadcaster's co-operation at that stage of the process.²⁸

5.25 As with the process prior to a provisional breach notification, the broadcaster will be asked if it would be prepared in principle to agree to the settlement requirements and make admissions on that basis. The timeframe for doing so will be set on a case-by-case basis having regard to possible resource savings through the settlement process. Ofcom would then take the view as to whether it is likely to be productive to engage in further settlement discussions on that basis.

5.26 Ofcom would not expect to receive any further representations at this stage.

Successful conclusion of the settlement process

5.27 In the event that settlement discussions are successful and the broadcaster has indicated to Ofcom that it is prepared to agree to the settlement requirements and to make admissions on a basis which reflects Ofcom's position, it would need to confirm

²⁸ That discount would reflect the discount that Ofcom would be minded to apply to the penalty were settlement discussions successful and concluded swiftly. Were Ofcom minded to reduce the discount at any point on account of the time taken and the resources used in the discussions, we would give the broadcaster notice of that at that point.

to Ofcom in writing its admissions and acceptance of the settlement requirements. That letter should be sent by its Chief Executive Officer or another senior member of its executive.

- 5.28 If Ofcom had not already done so, we would proceed to issue a provisional breach notification on the basis of the position reached during the settlement discussions. This would contain the proposed penalty amount, including the settlement discount.²⁹ The broadcaster would then be given a short time period to provide written representations on manifest factual inaccuracies in the provisional breach notification.
- 5.29 Prior to the broadcaster confirming its final agreement and formally making the relevant admissions, Ofcom would expect to share with the broadcaster, for the purposes of factual corrections, a draft of the proposed final enforcement decision which would reflect the position reached during the settlement discussions. The decision would contain the penalty amount, including the settlement discount.³⁰
- 5.30 The relevant decision maker would then formally make Ofcom's final decision.

What happens if settlement discussions are unsuccessful?

- 5.31 The broadcaster may withdraw from settlement discussions at any time before confirming that it has accepted the requirements for settlement and made an admission. Ofcom may also withdraw from settlement discussions at any stage, though prior to doing so, we would notify the broadcaster and give it the opportunity to respond.
- 5.32 If settlement discussions do not result in a settlement then the case will revert to the usual procedure.
- 5.33 The broadcaster would not have entered into the binding settlement agreement and therefore would not have made any formal admissions.
- 5.34 The final decision maker would not see any notes of any settlement discussions and the case team would not reveal details of the settlement discussions to the decision maker, so that the decision could be taken impartially on the basis of the relevant evidence.
- 5.35 As noted above, settlement discussions are not akin to "without prejudice" negotiations for the purposes of seeking to resolve litigation. Any additional documentary evidence provided during the settlement discussions would still go onto the case file and could be taken into account by Ofcom for the purposes of its final enforcement decision even if settlement discussions break down. In addition, Ofcom may follow up any new issues of regulatory concern which come to light during settlement discussions.

²⁹ This would, for example, be the same amount as previously proposed to the broadcaster were settlement discussions successful and concluded swiftly. The discount may be reduced in the event the discussions take longer, as set out above.

³⁰ As noted above, the discount may be reduced in the event the discussions take longer, as set out above.

Publicity

- 5.36 Ofcom will not usually publish the fact that settlement discussions are taking place, or that settlement discussions have been unsuccessful. However, following the conclusion of a successful settlement process, Ofcom would normally expect to refer to the fact that settlement has been agreed in the final published decision and may publicise this on our website in accordance with our usual process.