



BT's response to Ofcom's consultation on revising the procedures for TV, radio and video-on-demand services

6 March 2017

BT broadly welcomes the proposed changes within this consultation such as more clarity around the process itself, including an opportunity for license holders to represent their views via oral hearings. However, there are a number of areas where we do have concerns and would urge Ofcom to go further and be more transparent as to the processes involved when investigation and sanction procedures are implemented.

To take the latter point first, Ofcom clarifies in this consultation that there will be different Ofcom Executive decision makers across the investigation at the Preliminary View (PV) stage and at the final decision stage. However, it is not clear from this consultation what the different members of the Ofcom investigation team review at the different stages. For instance, at the final decision stage, does the Ofcom Executive and/or Board review solely the summary prepared by Ofcom colleagues or do they get the opportunity to review the licensee's full response, as well as the content? To ensure fairness and proportionality, we would encourage Ofcom that at each part of the process, the different Ofcom decision makers review the content and the full response from the licensee. We have previously reviewed PVs which do not accurately summarise our initial response to the formal investigation and are concerned that, if Ofcom decision makers only see a subjective summary of licensee's response(s), a fair and objective outcome is far more difficult to achieve, which is contrary to Ofcom's objectives.

Although we welcome Ofcom's proposed wording to clarify that licensees have an opportunity, following the PV stage, to request an oral representation, there is no detailed information as to what criteria Ofcom will consider (and agree to) if this scenario arises. Without transparency about what this criteria will be, it is left in the complete discretion of Ofcom as to whether to permit an oral representation or not. We understand Ofcom has to take decisions on a case-by-case basis and, if it is Ofcom's intention to inform the licensee of their decision and, crucially, the reasons behind it when this scenario arises, we believe that it would be sensible to include this in the published process.

Ofcom is proposing to reduce the timing when issuing final decisions to broadcasters from two working days to one. In the consultation document Ofcom "...considers one working day sufficient notice for broadcasters and appropriate given the importance that Ofcom's processes are efficient and transparent...". We strongly consider that one working day is not sufficient notice for broadcasters.

Depending on the timing with the publication of the fortnightly Bulletin, broadcasters would only have a matter of hours to forewarn internal stakeholders, such as senior management and PR, to ensure that the necessary internal governance processes were followed and to manage any press enquiries following publication. This small window would be more severely curtailed in the event of having to manage absences, meetings and other diary commitments, meaning that finding time to discuss important matters such as this with senior stakeholders could reasonably be expected to take more than a 24 hour period. Consequently, we consider that this reduction in timeframe adds undue pressure on broadcasters. Furthermore, we fail to see how reducing this time allows Ofcom to be more efficient, especially as the Broadcast Bulletin is published fortnightly.

Finally, although the 'BBC first' model is not for consideration as part of this consultation, we believe this model of complaints handling is viable for other licensee holders to adopt. We understand Ofcom may be concerned with this approach being suitable for all licensee holders. However, where licensees can demonstrably evidence they: (a) have a dedicated Broadcast Compliance unit complying content and assessing risk ahead of recorded and live content; and (b) have a dedicated complaints unit dealing with viewer complaints in an appropriate and timely matter, we believe this system could be adopted for other broadcasters, not just the BBC. We will bring this matter to Ofcom in future face to face meeting planned in the spring.