



# Review of procedures for handling broadcasting complaints, investigations and sanctions

A consultation on proposals for new procedures for  
investigating breaches of broadcast licences and fairness &  
privacy complaints and for the consideration of statutory  
sanctions

Consultation

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## Section 1

# Executive Summary

- 1.1 This consultation seeks stakeholders' views on new proposed procedures ("the procedures") that Ofcom would normally follow when: investigating breaches of broadcast licences; investigating fairness and privacy complaints; and, considering statutory sanctions for breaches of broadcast licences.
- 1.2 Ofcom is the body in the UK responsible for issuing licences to television and radio broadcasters. Broadcasters must adhere to a number of specific requirements placed in their licences<sup>1</sup> which enable Ofcom to fulfil our duties. Our duties include: ensuring that the public are adequately protected from offensive or harmful material and from unfair treatment or unwarranted infringements of privacy; and, ensuring a wide range of TV and radio services of high quality and wide appeal. Ofcom also has more specific duties in relation to, for example, the provision of subtitling, signing and audio description.
- 1.3 When Ofcom receives a complaint or decides to investigate whether a broadcaster has breached one of these specific requirements we follow certain published procedures.
- 1.4 The purpose of this consultation document is to seek views on changes to those procedures.

### Why are we proposing to make changes now?

- 1.5 The assessment of complaints about, and investigations into, possible breaches of broadcasters' licences play a crucial role in ensuring that the public is appropriately protected.
- 1.6 It is important that our procedures for carrying out these investigations and imposing sanctions, where appropriate, are as effective and efficient as possible.
- 1.7 Following previous periodic revisions to these procedures, we believe that they could be further improved for the benefit of all of our stakeholders. Ofcom is generally carrying out a review of its programmatic work to make it as efficient and effective as possible in light of a review of resources in the current economic climate. As part of this wider review of how we carry out our work we are proposing a number of changes to our procedures for investigations and sanctions which would:
  - streamline our processes and procedures to eliminate non value adding activities;
  - improve the speed with which we carry out investigations;
  - allow more responsive decision making;
  - simplify stakeholders interactions with us on a day to day basis; and,

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<sup>1</sup>In the case of the BBC and S4C who do not hold a licence these are called 'relevant enforceable requirements'.

- deliver greater value for our stakeholders.

It is important to note that these proposed changes are designed in a way to ensure continued fairness to those that are involved in our investigations and complaints procedures.

### **Next Steps**

- 1.8 This document sets out in turn our proposals for new procedures for:
- investigating breaches of broadcast licences;
  - investigating fairness and privacy complaints; and,
  - considering statutory sanctions for breaches of broadcast licences.
- 1.9 Written views and comments on each of the proposed new Procedures are requested by 11 February 2011.
- 1.10 Following the end of the consultation period, Ofcom will publish finalised versions of each of these procedures.

## Section 2

# Consultation

### What is the purpose of the consultation?

- 2.1 This consultation seeks stakeholders' views on new proposed procedures ("the procedures") that Ofcom would follow when: investigating breaches of broadcast licences; investigating fairness and privacy complaints; and, considering statutory sanctions for breaches of broadcast licences.
- 2.2 Ofcom is the body in the UK responsible for issuing licences to television and radio broadcasters.
- 2.3 Ofcom has general duties in relation to broadcasting which include: securing adequate protection for the public from offensive or harmful material and from unfair treatment or unwarranted infringements of privacy; and, ensuring a wide range of TV and radio services of high quality and wide appeal. Ofcom also has more specific duties in relation to, for example, the provision of subtitling, signing and audio description and the requirement for a radio station to deliver 'the proposition' set out in its published Format.
- 2.4 In order to ensure that Ofcom is able to fulfil its duties all broadcasters must adhere to specific requirements placed in their licence, or in the case of the BBC<sup>2</sup> and S4C<sup>3</sup>, who do not hold a licence, to any relevant enforceable requirement (taken together these requirements are referred to as "a relevant requirement").
- 2.5 When Ofcom receives a complaint or decides to investigate whether a broadcaster has breached a relevant requirement it follows certain published procedures.
- 2.6 We currently have three sets of published procedures which explain to members of the public and broadcasters how we deal with complaints, investigations and statutory sanctions.
- 2.7 The current procedures for considering complaints and carrying out investigations relating to breaches of licence conditions are set out in the **Procedures for the handling of broadcasting standards or other licence-related cases at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>**.
- 2.8 The current procedures for handling complaints about unfair treatment or infringements of privacy during the making or showing of programmes and advertising ("fairness and privacy complaints") are set out in the **Procedures for the handling of fairness & privacy complaints at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>**.

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<sup>2</sup> Through The Agreement between the BBC and the Secretary of State for Culture Media and Sport, the BBC is required to comply with certain 'relevant enforceable requirements'.

<sup>3</sup> The Welsh Authority operates its television service under the name S4C.

- 2.9 The current procedures for the consideration and determination of statutory sanctions<sup>4</sup> are set out in the **Procedures for the consideration of statutory sanctions in broadcasting or other licence-related cases** at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>.
- 2.10 The purpose of this consultation document is to seek views on proposed changes to these published procedures.

### Why are we proposing to make changes now?

- 2.11 The assessment of complaints about, and investigations into, possible breaches of broadcasters' licences play a crucial role in ensuring that the public is appropriately protected.
- 2.12 It is important that our procedures for carrying out these investigations and imposing sanctions, where appropriate, are as effective and efficient as possible.
- 2.13 Following previous periodic revisions to these procedures, we believe that they could be further improved for the benefit of all of our stakeholders. Ofcom is generally carrying out a review of its programmatic work to make it as efficient and effective as possible in light of a review of resources in the current economic climate. As part of this wider review of how we carry out our work we are proposing a number of changes to our procedures for investigations and sanctions which would:
- streamline our processes and procedures to eliminate non value adding activities;
  - improve the speed with which we carry out investigations;
  - allow more responsive decision making;
  - simplify stakeholders interactions with us on a day to day basis; and,
  - deliver greater value for our stakeholders.
- 2.14 We are therefore proposing three new sets of procedures for: investigating breaches of broadcast licences; investigating fairness and privacy complaints; and, considering statutory sanctions for breaches of broadcast licences. These are set out in sections 3, 4 and 5 of this consultation document.
- 2.15 However, it is important to note that when considering changes to our current procedures, Ofcom wants to ensure that it maintains high quality decision-making. We also want to ensure that fairness (to all stakeholders) continues to be at the heart of the procedures. We consider that the proposed changes fulfil these two important criteria.

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<sup>4</sup> Sanctions are penalties imposed by Ofcom upon broadcasters for serious or repeated breaches of licence conditions. Sanctions can range from a direction not to repeat offending material up to the revocation of a broadcaster's licence. Sanctions often take the form of a financial penalty.

## What are the key proposed changes?

2.16 Please note that we have not set out detailed comparisons between the current and the proposed sets of procedures in this consultation document as the proposed versions have been completely re-written for clarity and for ease of use. Instead the new proposed procedures are detailed in sections 3, 4 and 5 of this document. Some of the key proposed changes are detailed below.

2.17 We propose to:

- **Move to an “issues based” model for ensuring compliance with relevant requirements.** Complaints are very valuable to Ofcom. They help ensure that broadcasters comply with the rules and regulations they are required to under statute. Ofcom will continue to acknowledge all complaints. Ofcom will also inform all complainants where they can find the outcome of their complaints (i.e. in a dedicated part of Ofcom’s website where the Broadcast bulletin is published). However, we propose to no longer reply to every individual complaint with a ‘tailored’ response. As now, we would investigate where necessary and prioritise our investigations according to a number of relevant factors (i.e. harm to minors, financial detriment, ongoing harm).
- **Introduce a ‘Preliminary View’.** We propose to reach a ‘preliminary view’ on investigations earlier in the process. The ‘preliminary view’ will contain a summary of the complaint(s) (where appropriate) and Ofcom’s preliminary view on whether any breaches of a licence requirement have occurred. The ‘preliminary view’ will be provided to the broadcaster (and to complainants in Fairness and Privacy complaints) earlier in the investigation process. This will enable broadcasters (and complainants in Fairness and Privacy complaints) to prepare and provide their representations having had sight of Ofcom’s ‘preliminary view’. Only after considering those representations will Ofcom reach its decision on whether there has been a breach.
- **Remove the internal review mechanism.** Given that broadcasters (and in the case of fairness and privacy cases, complainants) will have sight and be able to make representations on Ofcom’s preliminary view, we consider that there is no longer a need for a formal review mechanism. We therefore propose to remove the opportunity to request an internal review of all of our decisions on breaches of broadcast licence requirements (including in relation to fairness and privacy adjudications). This will also result in the removal of the Broadcasting Review Committee.
- **Remove the Broadcasting Sanctions Committee.** The consideration and determination of statutory sanctions will be carried out by any person(s) within Ofcom with appropriate delegation from the Ofcom Board to carry out this function. This is consistent with Ofcom’s overall drive to reduce unnecessary complexity of its governance structure.
- **Clarify Ofcom’s approach to the disclosure of information it gathers during investigations.** 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 or investigation may need to be disclosed by Ofcom in order to meet such obligations.

## What is the impact of our proposals?

- 2.18 Impact assessments provide a valuable way of assessing different options for regulation and showing why preferred options have been chosen. They form part of best practice policy-making. Generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities.
- 2.19 However, taking into account the key proposed changes above, we consider that our policy approach to regulation as a result of the current proposals would remain unchanged. In particular our proposals are not considered likely to have a significant effect on businesses or the general public, nor do they represent major change in Ofcom's activities. This is because the principal purpose of these proposals is to streamline three different sets of current procedures to deliver greater value for money, providing savings that benefit our stakeholders and minimising regulatory costs.
- 2.20 In relation to regulatory impact and to equality (whether in Northern Ireland or the rest of the UK and including gender, disability or ethnicity), we therefore do not consider that our proposals would have any particular implications for people to whom these considerations relate. Therefore a full impact assessment is not considered necessary.

## Next Steps

- 2.21 The following sections of the document set out in turn our proposals for new procedures for:
- investigating breaches of broadcast licences;
  - investigating fairness and privacy complaints; and,
  - considering statutory sanctions for breaches of broadcast licences.
- 2.22 Written views and comments on each of the proposed new Procedures are requested by 11 February 2011.
- 2.23 Following the end of the consultation period, Ofcom intends to publish finalised versions of each of the procedures for investigating breaches of broadcast licences, for investigating fairness and privacy complaints and for the considering the statutory sanctions for breaches of broadcast licences.

## Section 3

# Ofcom procedures for investigating breaches of broadcast licences

## Overview and general information

- 3.1 This document outlines the procedures that Ofcom will normally follow when considering complaints or initiating its own investigations about broadcasters' compliance with, the requirements of their licences or, in the case of the BBC or S4C who do not hold licences, with any relevant enforceable requirement. In this document all these requirements are referred to as "a relevant requirement"). These procedures are effective from *[insert publication date]*<sup>5</sup>. Separate procedures apply to the consideration of fairness and privacy complaints<sup>6</sup>. If Ofcom considers that it would be more fair and appropriate to follow a different procedure in any particular case or category of cases, we will explain our reasons for departing from these procedures.
- 3.2 Ofcom has general duties in relation to broadcasting which include: securing adequate protection for the public from offensive or harmful material and from unfair treatment or unwarranted infringements of privacy; and, ensuring a wide range of TV and radio services of high quality and wide appeal. Ofcom also has more specific duties in relation to, for example, the provision of subtitling, signing and audio description and the requirement for a radio station to deliver 'the proposition' set out in its published Format. Ofcom carries out its duties by granting licences, and including in those licences conditions it thinks are appropriate to help it carry out its duties. These conditions include requirements: to provide information, to offer specific programmes and types of content, and to comply with various codes of practice issued by Ofcom.
- 3.3 Ofcom has a specific duty under section 319 of the Communications Act 2003 ("the Act") to establish codes. These Codes set standards that will best secure the objectives set out in section 319(2) of the Act, relating to the content of programmes to be included in television and radio services. Section 325 of the Act requires Ofcom to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.
- 3.4 Complaints and investigations about issues raised concerning any relevant requirement, including those covered by the following Ofcom Codes, will be governed by these procedures: the Broadcasting Code (other than about fairness and privacy); the Cross-promotion Code, the Code on Access Services, the Rules on Text Size, the Code on the Scheduling of Television Advertising (COSTA); the Electronic Programme Guide (EPG) Code; Code on Listed Events; broadcast technical codes (e.g. Digital Technical Code) and, where appropriate, the UK Code of Broadcast Advertising (the BCAP Code).

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<sup>5</sup> The procedures set out in this document, and any related guidance, may be reviewed and amended at any time. Any major revision will be the subject of prior consultation.

<sup>6</sup> The procedures for the investigation of fairness and privacy complaints are available on Ofcom's website at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>

For the purposes of these procedures any reference to ‘Ofcom’ means any member of the Ofcom Executive, the Ofcom Board, any member of Ofcom’s Content Board or any other sub-committee of the Ofcom Board; and, any other person with appropriate delegation from the Ofcom Board to carry out functions described in these procedures.

References to “programmes” in these procedures include teletext, subtitles, and anything included in television and radio services, other than most forms of advertising<sup>7</sup>.

References to “broadcasters” in these procedures are any broadcaster licensed and/or regulated by Ofcom.

References to “breach” in these procedures are to breaches of a relevant requirement, as set out in paragraph 1 above.

- 3.5 Ofcom may launch investigations on its own initiative as well as investigate complaints. The procedures in a complaint-led investigation and an Ofcom-initiated investigation are the same.

## Procedures

### Making a complaint

- 3.6 Complaints can be made to Ofcom by any person or body who considers that a broadcaster has failed to comply with a relevant requirement. Complaints can, for example, be made about:
- harmful or offensive material in programmes;
  - the protection of those aged under 18;
  - programmes which are inaccurate or partial;
  - a radio station failing to deliver the service described in its licence; or
  - the failure by a broadcaster to provide subtitling, signing or audio description.
- 3.7 In the interests of timely resolution, complainants are encouraged to follow the broadcaster’s own complaints procedure before making a complaint to Ofcom. The contact details of all broadcasters can be found on Ofcom’s website. If a complainant is not satisfied with the broadcaster’s response to their complaint, the complaint can then be submitted to Ofcom. Complaints can also be made directly to Ofcom in the first instance<sup>8</sup>.

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<sup>7</sup> Complaints about advertising and teleshopping are in general investigated by the Advertising Standards Authority (“the ASA”). However, Ofcom is responsible for the regulation of certain advertising requirements, such as political advertising, Participation TV, complaints about fairness and privacy in advertisements, and complaints or cases concerning COSTA which are investigated by Ofcom.

<sup>8</sup> Where a complainant complains to the broadcaster first Ofcom will expect the broadcaster to retain the relevant recordings and any related material for the periods required by statute following the date on which the broadcaster may reasonably expect the complainant to have received the broadcaster’s final determination. Recordings of radio programmes must be kept by broadcasters for 42 days after the broadcast. Recordings of television programmes must be kept for 60 days, except in the case of BBC1, BBC3, ITV1, Channel 4, Five and S4C in which case recordings must be kept for 90 days.

- 3.8 Ofcom requests that complaints are submitted on its complaint form. To access a complaint form (including for complaints concerning subtitling, signing and audio description), go to Ofcom's website at <http://consumers.ofcom.org.uk/tell-us/tv-and-radio/>. Alternatively, for any complaint you can contact us at: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone 020 7981 3000. If you have a text phone you can call 020 7981 3043 – please note that this number only works with special equipment used by people who are deaf or hard of hearing.
- 3.9 All complaints should include sufficient detail about the matter complained of and the complainant's full contact details (including e-mail address where appropriate). Complaints about broadcast material should also include the name of the programme complained about, the date and time of the broadcast, the channel/service on which it was broadcast, and the nature of the complaint. A failure to provide these details may mean that it is not possible for Ofcom to be able to investigate the complaint.
- 3.10 Unless a complainant specifically requests at the time a complaint is made that his/her name and contact details should remain confidential, Ofcom reserves the right to disclose these to the broadcaster<sup>9</sup>.
- 3.11 Complainants should submit their complaint to Ofcom within 20 working days of the broadcast of the relevant programme or of the occurrence of the matter complained of. Where a complainant has previously complained directly to the broadcaster, it should submit its complaint to Ofcom within 20 days of the final determination by the broadcaster or if no determination within 20 days of when it could reasonably have expected a determination by the broadcaster.

### Assessing and Investigating

- 3.12 All complaints are important to Ofcom as they help us to understand whether a broadcaster may be failing to comply with its relevant requirements. Ofcom will log and acknowledge every complaint that it receives. However, it will not normally correspond any further with individual complainants. All Ofcom decisions are published in its Broadcast Bulletin, which are published fortnightly on its website at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.
- 3.13 Ofcom may ask the broadcaster for a copy of the relevant programme at this stage, which must be provided within five working days<sup>10</sup>. At this stage it is not appropriate for the broadcaster to provide written representations.
- 3.14 Where Ofcom decides there are issues which warrant investigation it will normally publish details on its website at <http://stakeholders.ofcom.org.uk/enforcement/audience-complaints/>.

#### **Representations from directly affected third parties**

Individuals or bodies who are directly affected by a case may make representations to Ofcom during its investigation. Anyone making a representation of this kind will be

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<sup>9</sup> Ofcom is a 'prescribed person' under the Public Interest Disclosure Act 1998 and has published guidance at <http://www.ofcom.org.uk/about/accoun/pida/> on how to make a disclosure to Ofcom under the provisions of this Act.

<sup>10</sup> Condition 11 of all broadcast licences states that a licensee must make and then retain a recording of all its programmes for a fixed period of days from broadcast, and at Ofcom's request must produce recordings "forthwith".

expected to do so as early as possible in the investigation. Wherever possible, broadcasters should include representations of directly affected third parties of whom they are aware (such as a presenter or someone else involved in the production of a programme) in their submissions. However, if appropriate directly affected third parties may make representations directly to Ofcom.

If appropriate, Ofcom will provide the directly affected third party with a copy of its preliminary view and a summary of any relevant representations which relate to them. If appropriate, Ofcom will give the broadcaster an opportunity to comment on any relevant representations made by the third party.

- 3.15 Ofcom will then normally prepare its preliminary view. The preliminary view will contain a summary of the complaint(s) (where appropriate) and Ofcom's preliminary view on whether any breaches of a licence requirement have occurred. For example, in many of the broadcast standards cases or when a radio station is failing to deliver the service described in its licence, Ofcom will prepare its preliminary view after assessing the broadcast content against the Broadcasting Code or the relevant requirement of the licence.
- 3.16 In some other cases, however, Ofcom may require further information from the broadcaster before it is able to prepare its preliminary view. For example, in a case involving a possible breach of the rules concerning commercial references in television or radio programmes, Ofcom may need additional information about the commercial arrangements in place before it is able to prepare its preliminary view. In such circumstances, the broadcaster will normally be given 10 working days to provide the information requested.
- 3.17 When Ofcom has prepared its preliminary view, Ofcom will provide it to the broadcaster (and directly affected third party where appropriate) and request representations within 10 working days<sup>11</sup>.
- 3.18 Once Ofcom has received and considered the broadcaster's representations (or any relevant representations from a directly affected third party as appropriate) on its preliminary view, it will reach its decision (i.e. whether or not to record a licence breach) and inform the broadcaster.

### **Publication of Decision**

- 3.19 The Decision will be published in Ofcom's Broadcast Bulletin on its website.

### **Non Disclosure**

- 3.20 Subject to any relevant obligations, it is an essential part of the integrity of Ofcom's processes that all parties concerned abide by all Ofcom's published rules and procedures. These require, for example, that parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint<sup>12</sup> during the course of the investigation (see text box below). This

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<sup>11</sup> In some cases Ofcom may shorten the time period for providing representations as appropriate.

<sup>12</sup> 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). Such obligations do not allow the use of exemptions by Ofcom in an arbitrary fashion.

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

### **Non Disclosure**

Parties (complainants, broadcasters, 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, all parties are subject to the requirement of non disclosure in relation to all other material submitted and communications/correspondence entered into in relation to that complaint or case<sup>13</sup>. Moreover, once a complaint has been made or Ofcom has started investigating a case, no party should take any steps which could – whether intentionally or not – compromise, or risk compromising, a fair decision on the matter by Ofcom or otherwise constitute, in Ofcom’s opinion, an abuse of process.

Failure to follow these requirements may result in Ofcom ceasing to consider the party’s representations.

### **Time limits**

- 3.21 Complainants and broadcasters should keep to the time limits specified in these procedures. The time limits may be extended or shortened, in appropriate circumstances, at Ofcom’s discretion. Any complainant or broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.

### **Failure to follow procedures**

- 3.22 Any failure by the broadcaster to follow these procedures may result in Ofcom taking regulatory action.

### **Sanctions**

- 3.23 If Ofcom believes that a breach of a relevant requirement may justify consideration of a statutory sanction against the broadcaster, then the Procedures for the Consideration of Statutory Sanctions in breaches of broadcast licences will apply<sup>14</sup>. These are available on Ofcom’s website at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/> .

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Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations and nothing in these Procedures can prevent Ofcom from doing so.

<sup>13</sup> 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 broadcaster will be notified that relevant material has been withheld and the reasons why.

<sup>14</sup> The Advertising Standards Authority (“The ASA”) may, under the terms of its Memorandum of Understanding with Ofcom, request Ofcom to consider a statutory sanction in an advertising case. In such cases, the ASA will normally have published a breach of its code.

## Section 4

# Ofcom's procedures for the investigation of Fairness & Privacy complaints

## Overview and general information

- 4.1 This document outlines the procedures that Ofcom will normally follow when considering fairness and privacy complaints in relation to the making or the transmission of programmes. These procedures are effective from *[insert publication date]*<sup>15</sup>. If Ofcom considers that it would be more fair and appropriate to follow a different procedure in any particular case, we will explain our reasons for departing from these procedures. Separate procedures apply for investigating other breaches of broadcast licences-related cases.
- 4.2 Ofcom has a general duty under Section 3 of the Communications Act 2003 to set standards that provide adequate protection to members of the public from unfair treatment and unwarranted infringement of privacy. Ofcom has a specific duty under section 107 of the Broadcasting Act 1996 (as amended<sup>16</sup>) ("the 1996 Act") to draw up a code of practice with respect to fairness and privacy. This Code sets out the principles to be observed and practices to be followed by broadcasters to ensure the avoidance of unjust or unfair treatment of people appearing in programmes and unwarranted infringement of privacy of people appearing in (or in connection with the obtaining of material included in) programmes. Under section 110 of the 1996 Act, Ofcom must consider and, where appropriate, adjudicate on fairness and privacy complaints. Sections 111 to 130 of the 1996 Act provide further detail of certain of the procedures to be followed by Ofcom, complainants and broadcasters in the consideration of complaints relating to fairness and privacy.

For the purposes of these procedures any reference to 'Ofcom' means any member of the Ofcom Executive, the Ofcom Board, any member of Ofcom's Content Board or any other sub-committee of the Ofcom Board; and, any other person with appropriate delegation from the Ofcom Board to carry out functions described in these procedures.

References to "programmes" in these procedures include advertisements, teletext, subtitles, and any item included in television and radio services.

References to "broadcasters" in these procedures are any broadcaster licensed and/or regulated by Ofcom.

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<sup>15</sup> The procedures set out in this document, and any related guidance, may be reviewed and amended at any time. Any major revision will be the subject of prior consultation.

<sup>16</sup> The Broadcasting Act 1996 was amended by the Communications Act 2003.

## Procedures

### Making a complaint

- 4.3 Fairness and privacy complaints must be made by a person or body directly affected by the programme, or by someone else authorised to make the complaint on behalf of a person or body directly affected. Fairness and privacy complaints are complaints about unjust or unfair treatment in programmes, or unwarranted infringement of privacy in (or in connection with the obtaining of material included in) programmes (for further details on who can make a complaint, see the “Entertainment Decisions” text box below).
- 4.4 In exceptional circumstances, where Ofcom considers it necessary in order to fulfil Ofcom’s duty to protect members of the public from unfair treatment and unwarranted infringements of privacy, Ofcom may consider fairness or privacy issues in the absence of a complaint from the affected party. In those exceptional circumstances, we would set out in advance the procedure that we intend to follow<sup>17</sup>. The procedure would be similar to these but adapted as appropriate to ensure that they are fair.
- 4.5 In the interest of timely resolution, complainants are encouraged to follow the broadcaster’s own complaints procedure before making a complaint to Ofcom. The contact details of all radio and television broadcasters can be found on Ofcom’s website. If a complainant is not satisfied with the broadcaster’s response to their complaint, the complaint can be submitted to Ofcom. Complaints can also be made directly to Ofcom in the first instance.
- 4.6 Ofcom will normally consider fairness and privacy complaints only if they are in writing and on Ofcom’s fairness and privacy complaint form. (To access this complaint form go to Ofcom’s website at <http://www.ofcom.org.uk/complain/progs/specific/?itemid=353159> or contact: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, Tel No. 020 7981 3000). All complaints should include the name of the programme complained about, the date and time of the broadcast, the channel on which it was broadcast, and the nature of the complaint and the complainant’s full contact details (including e-mail address where appropriate). It is very important that the complainant provides as many of these details as possible. Failure to provide these details may prevent Ofcom from identifying the programme within a reasonable time and as a result Ofcom may not be able to consider the complaint.
- 4.7 Complainants should submit their complaint to Ofcom within 20 working days after broadcast of the relevant programme. Where a complainant has previously complained directly to the broadcaster, it should submit its complaint to Ofcom within 20 days of the final determination by the broadcaster or if no determination within 20 days of when it could reasonably have expected a determination by the broadcaster. Ofcom will only consider complaints received outside these deadlines in exceptional circumstances<sup>18</sup>. Ofcom will expect the broadcaster to retain the relevant recordings

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<sup>17</sup> As we do for example in relation to complaints made to the Election Committee.

<sup>18</sup> Broadcasters should be aware that they are required to ensure that Ofcom’s functions in relation to fairness and privacy complaints are brought to the attention of the public. (These include functions which enable complainants to ask Ofcom to consider complaints where they are dissatisfied with the broadcaster’s consideration of the complaint).

and any related material for the periods required by statute<sup>19</sup> from the date on which the broadcaster may reasonably expect the complainant to have received the broadcaster's final determination.

## Assessing a complaint

- 4.8 On receiving a complaint Ofcom will normally forward a copy of the complaint to the broadcaster and ask it to provide a recording of the programme within five working days<sup>20</sup>. At this stage, it is not appropriate for broadcasters to provide written responses on the substance of the complaint.
- 4.9 Ofcom will then decide whether or not to entertain the complaint. This decision is called the Entertainment Decision.

### Entertainment Decisions

As explained above, fairness and privacy complaints are complaints about unjust or unfair treatment in programmes, or about unwarranted infringement of privacy of people in programmes (or in connection with the obtaining of material included in them).

Fairness and privacy complaints must be made by the "person affected" by the programme, or by someone else authorised to make the complaint on behalf of the person affected. In exceptional circumstances, a member of the family of the person affected or someone closely connected to that person may make a complaint without the authority of the person affected. This will be appropriate if the person affected is unable to give that authority, for example, because s/he is under the age of 16.

The "person affected" by the programme is a person who:

- a) was a participant in the programme who was the subject of the alleged unfair treatment; or
- b) whether such a participant or not, had a direct interest in the subject-matter of that alleged unfair treatment; and,
- c) was a person whose privacy may have been infringed in a programme or in the making of a programme.

The relevant legislation sets out a number of criteria that must be satisfied before a fairness and privacy complaint can be entertained by Ofcom. The criteria are detailed below:

- the matter(s) complained of must not be the subject of legal proceedings in the UK or be more appropriately resolved by legal

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<sup>19</sup> Recordings of radio programmes must be kept by broadcasters for 42 days after the broadcast. Recordings of television programmes must be kept for 60 days except in the case of BBC1, BBC2, ITV1, Channel 4, Five and S4C in which case recordings must be kept for 90 days.

<sup>20</sup> Condition 11 of all broadcast licences states that a licensee must make and then retain a recording of all its programmes for a fixed period of days from broadcast, and at Ofcom's request must produce such recordings "forthwith".

proceedings in the UK;

- the complaint must not be frivolous; and,
- it must not be inappropriate to entertain or proceed with consideration of the complaint for any other reason.

- 4.10 The complainant and the broadcaster will be provided with a copy of Ofcom's Entertainment Decision indicating whether Ofcom will be proceeding with consideration of the complaint<sup>21</sup>.
- 4.11 Not all complaints (or all parts of complaints) received will fall into Ofcom's fairness and privacy remit. However, if the complaint raises other matters which are within Ofcom's remit, the complaint will be passed to an appropriate section of Ofcom for assessment. (If it is a broadcast licence-related matter the Procedures for investigating breaches of broadcast licences will apply, which are available on Ofcom's website at:  
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/> .

## Representations

- 4.12 If a complaint is entertained by Ofcom, the relevant broadcaster will be asked to provide a statement in response to the complaint within 15 working days.
- 4.13 On receipt of the broadcaster's statement, Ofcom will provide a copy of it to the complainant.
- 4.14 Ofcom will then normally prepare its preliminary view which will contain a summary of the complaint and of the broadcaster's statement in response and Ofcom's preliminary view on whether any breaches have occurred. Ofcom will provide the preliminary view to the broadcaster and complainant and request representations from both parties within 10 working days. In some circumstances, Ofcom may decide to hold a hearing before reaching a decision (see 'Hearings' box below).
- 4.15 Once Ofcom has received and considered the broadcaster's and complainant's representations (or any relevant representations from a directly affected third party as appropriate) on its preliminary view, it will normally then reach its decision and adjudicate.

## Hearings

Every fairness complaint made to Ofcom shall be considered either at a hearing, or if we think fit, without a hearing. If Ofcom considers that a hearing is necessary to ensure that the proceedings are fair, for example if there is a significant dispute of fact, Ofcom will consider the complaint at a hearing. At the hearing the parties will be invited to make oral representations. Ofcom will normally give 15 working days notice of the hearing date to the parties.

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<sup>21</sup> Details of all programmes being investigated (i.e. if a fairness and privacy complaint has been entertained), will be published on Ofcom's website at <http://stakeholders.ofcom.org.uk/enforcement/audience-complaints/> .

Hearings may take place in England, Northern Ireland, Scotland, or Wales, as appropriate.

Hearings are held in private. Each of the parties may bring to the hearing any other person (normally up to a maximum of three other people). Their names, connection to the case and a description of the role they intend to play at the hearing, should be given to Ofcom at least five working days before the hearing. Ofcom must also be informed if any person to attend a hearing is under the age of 16.

## **Unsolicited material**

4.16 Any additional written submissions or other information not requested by Ofcom, will not normally be accepted. The admission of unsolicited material will only be considered if it is:

- relevant to the complaint; and
- significant in advancing Ofcom's understanding of the complaint; and,
- could not reasonably have been produced earlier.

4.17 Whether such material is admitted will be at Ofcom's discretion. If unsolicited material is admitted it will be provided to the other party who will then be given an opportunity to comment on it.

## **Representations from directly affected third parties**

Individuals or bodies who are directly affected by a fairness & privacy complaint may make representations to Ofcom during its investigation. Details of programmes that are being investigated will be published on Ofcom's website at the opening of an investigation, and anyone making a representation of this kind will be expected to do so as early as possible in the investigation. Wherever possible, broadcasters should include representations of directly affected third parties of whom they are aware (such as a presenter or someone else involved in the production of a programme) in their submissions. However, if appropriate, a directly affected third party may make representations directly to Ofcom.

If appropriate, Ofcom will provide the directly affected third party with a copy of its preliminary view and a summary of any relevant representations which relate to them. If appropriate, Ofcom will give the broadcaster an opportunity to comment on any relevant representations made by the third party.

## **Disposal**

4.18 During the course of considering a complaint, Ofcom may decide to cease to proceed and dispose of the complaint. The relevant legislation sets out a number of circumstances where Ofcom should cease consideration of a fairness and privacy complaint. These are:

- where the matter(s) complained of are the subject of legal proceedings in the UK or would be more appropriately resolved by legal proceedings in the UK;
- where the complaint is frivolous; or
- where it is inappropriate to proceed with consideration of the complaint for any other reason.

4.19 The complainant and the broadcaster will be provided with a copy of Ofcom's Disposal Decision.

### **Publication of Decision**

4.20 Adjudications will normally be published in Ofcom's Broadcast Bulletin on its website.

4.21 If a complaint is upheld or partly upheld, Ofcom may also direct the broadcaster to broadcast a summary of its Adjudication. Ofcom will normally make such a direction where there has been a breach of the fairness and/or privacy sections of the Ofcom Broadcasting Code which has resulted in a complainant's legitimate interests being seriously damaged and requires a remedy over and above publication in the Ofcom Broadcast Bulletin. Any decision to direct will reflect Ofcom's duties to be proportionate, consistent and targeted only at cases on which, in Ofcom's view, action is merited.

### **Non Disclosure**

4.22 Subject to any relevant obligations, it is an essential part of the integrity of Ofcom's processes and its ability to adjudicate fairly that the parties concerned, both complainant and broadcaster, abide by all Ofcom's published rules and procedures. These require, for example, that parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint<sup>22</sup> during the course of the investigation (see text box below). This requirement of non disclosure does not limit what Ofcom can publish in its decision at the end of the investigation.

#### **Non Disclosure**

Parties (complainants, broadcasters, 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 information which is already in the public domain.

However, all parties are subject to the requirement of non disclosure in relation to all other material submitted and communications/correspondence entered

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<sup>22</sup> 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). Such obligations do not allow the use of exemptions by Ofcom in an arbitrary fashion. Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations and nothing in these Procedures can prevent Ofcom from doing so.

into in relation to that complaint or case<sup>23</sup>. Prior to Ofcom's final decision, the identity of a complainant may only be disclosed by the broadcaster or a third party to those with a direct interest in the matter complained of. Moreover, once a complaint has been entertained, no party should take any steps which could – whether intentionally or not – compromise, or risk compromising, a fair decision on the matter by Ofcom or otherwise constitute, in Ofcom's opinion, an abuse of process.

Failure to follow these requirements may result in Ofcom ceasing to consider the party's representations.

## Time limits

- 4.23 Complainants and broadcasters should keep to the time limits specified in these procedures. The time limits may be extended or shortened, in appropriate circumstances, at Ofcom's discretion. Any complainant or broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.

## Failure to follow procedures

- 4.24 Any failure by complainants to follow these procedures may result in Ofcom discontinuing its consideration of the complaint. Any such failure by broadcasters may result in Ofcom taking regulatory action.

## Sanctions

- 4.25 In addition to the adjudication of the complaint, if Ofcom believes that a fairness and privacy adjudication against a broadcaster may justify consideration of a statutory sanction against the broadcaster, then the Procedures for the consideration of statutory sanctions for breaches of broadcast licences will apply. These are available on Ofcom's website at <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>.

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<sup>23</sup> 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 broadcaster will be notified that relevant material has been withheld and the reasons why.

## Section 5

# Ofcom procedures for the consideration of statutory sanctions in breaches of broadcast licences

## Overview and general information

- 5.1 This document outlines the procedures that Ofcom will normally follow when considering the determination of a sanction against broadcasters for breaches of any requirement of their licence; or in the case of the BBC or S4C<sup>24</sup> who do not hold a licence, any relevant enforceable requirement. In this document all these requirements are referred to as “a relevant requirement”).<sup>25</sup> They are effective from *[date to be announced]*<sup>26</sup>. If Ofcom considers that it would be more fair and appropriate to follow a different procedure in any particular case, we will explain our reasons for departing from these procedures.
- 5.2 Ofcom has general duties in relation to broadcasting which include: securing adequate protection for the public from offensive or harmful material and from unfair treatment or unwarranted infringements of privacy; and, ensuring a wide range of TV and radio services of high quality and wide appeal. Ofcom also has more specific duties in relation to, for example, the provision of subtitling, signing and audio description and the requirement for a radio station to deliver ‘the proposition’ set out in its published Format. Ofcom carries out its duties by granting licences, and including in those licences conditions<sup>27</sup> it thinks are appropriate to help it carry out its duties. These conditions include requirements: to provide information, to offer specific programmes and types of content, and to comply with various codes of practice issued by Ofcom.
- 5.3 The BBC is also subject to the relevant Codes pursuant to the BBC Agreement and section 198 of the Act. Section 338 and paragraph 12 of Schedule 12 to the Act further provide that the Welsh Authority (i.e. S4C) must comply with the Codes.
- 5.4 In the event of a breach of a condition of a licence issued under the Broadcasting Acts, Ofcom has the power to impose statutory sanctions (“a sanction”) on the relevant broadcaster under provisions contained in the Broadcasting Acts<sup>28</sup>. Compliance with the Codes (whether in relation to editorial or advertising) is a condition of a licence and therefore any failure to do so may result in the imposition of a sanction. Ofcom’s powers to impose statutory sanctions on the BBC are

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<sup>24</sup> The Welsh Authority operates its television service under the name S4C.

<sup>25</sup> If Ofcom considers that it would be more appropriate to follow a different procedure in any particular case or category of cases, we will explain our reasons for departing from these procedures.

<sup>26</sup> The procedures set out in this document, and any related guidance, may be reviewed and amended at any time. Any major revision will be the subject of prior consultation.

<sup>27</sup> In the case of the BBC and the Welsh Authority (S4C) who do not hold Ofcom licences, these are called “relevant enforceable requirements”.

<sup>28</sup> The appropriate provision which empowers Ofcom to impose sanctions for a breach of licence conditions will depend upon the type of licence held.

contained in section 198 of the 2003 Act and its powers in respect of S4C are contained in section 341 of the 2003 Act.

For the purposes of these procedures any reference to 'Ofcom' means any member of the Ofcom Executive, the Ofcom Board, any member of Ofcom's Content Board or any other sub-committee of the Ofcom Board; and, any other person with appropriate delegation from the Ofcom Board to carry out functions described in these procedures.

References to "broadcasters" in these procedures are any broadcaster licensed and/or regulated by Ofcom.

- 5.5 The imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly<sup>29</sup>, or recklessly breached a relevant requirement.
- 5.6 The statutory sanctions available to Ofcom include a decision to:
- issue a direction not to repeat a programme or advertisement;
  - issue a direction to broadcast a correction or a statement of Ofcom's findings which may be required to be in such form, and to be included in programmes at such times as Ofcom may determine;
  - impose a financial penalty;
  - shorten or suspend a licence (only applicable in certain cases); or
  - revoke a licence (not applicable to the BBC, S4C or Channel 4).

### Financial penalty

In most cases the maximum fine for commercial television or radio licensees is £250,000 or 5% of the broadcaster's 'Qualifying Revenue', whichever is the greater. For licensed Public Service Broadcasters the maximum financial penalty payable is 5% of 'Qualifying Revenue'.

For the BBC or S4C, the maximum financial penalty payable is £250,000.

## Procedures

### Consideration of sanctions

- 5.7 The consideration of a sanction follows a decision by Ofcom that a broadcaster has breached a relevant requirement<sup>30</sup>. A case will normally be considered for the imposition of a statutory sanction when Ofcom considers that a broadcaster has seriously, deliberately, repeatedly, or recklessly breached a relevant requirement.

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<sup>29</sup> 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.

<sup>30</sup> The Advertising Standards Authority ("the ASA") may, under the terms of its Memorandum of Understanding with Ofcom, request Ofcom to consider a statutory sanction in an advertising case. In such cases, the ASA will normally have published a breach of its code.

- 5.8 If Ofcom considers that a sanction is appropriate, it will write to the broadcaster with the following information as appropriate:
- details of the breach/es;
  - comments on any issue raised by the broadcaster that is material to the case;
  - details of any relevant cases on which Ofcom has already adjudicated;
  - details of the broadcaster's recent compliance history;
  - details of Ofcom's preliminary view on the type and level of any sanction considered to be appropriate and proportionate;
  - a summary of the material on which it has relied in reaching its preliminary view; and
  - the relevant documentation<sup>31</sup> that Ofcom has taken into account will also be provided.
- 5.9 Where, at this stage, Ofcom considers that the appropriate sanction should include a financial penalty, then it will, as appropriate, consider the penalty in accordance with the Penalty Guidelines published by Ofcom at <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>.
- 5.10 Ofcom will then invite the broadcaster to make representations on its preliminary view of the type and level of any sanction being proposed. Depending on the type and level of any sanction, this may be by written and/or oral representations as Ofcom may consider appropriate.

### **Broadcaster representations**

- 5.11 When invited to make written representations on Ofcom's preliminary view of the type and level of any sanction being proposed, a broadcaster should do so within 15 working days, unless otherwise specified. In some circumstances, Ofcom may, at its discretion, invite a broadcaster to submit one or more sets of subsequent representations on a case, as it sees fit (it will also do so in cases where the statutory process requires so). Ofcom may also request any information it requires from the broadcaster, to assist its understanding of the case or if it is necessary to ensure that the process is fair.

### **Disposal**

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

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<sup>31</sup> 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 broadcaster will be notified that relevant material has been withheld and the reasons why.

## **Sanctions decision**

- 5.13 If, after considering all the evidence and representations from the broadcaster, Ofcom believes that a sanction is appropriate, it shall consider which of the available sanctions is appropriate and will reach a decision to this effect.

## **Revocation of licence**

- 5.14 In cases where the broadcaster is an Ofcom licence holder and Ofcom considers that the sanction to be imposed should be revocation of the licence, it will follow the statutory provisions governing the revocation of that licence<sup>32</sup>. 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<sup>33</sup>. The notice revoking the licence takes effect when it is served on the licence holder.
- 5.15 Where there is no statutory procedure prescribed for the revocation of a licence, for example where a person is no longer considered to be “fit and proper” to hold a licence, Ofcom will follow a comparable procedure in which the licensee will be given an opportunity to make representations on Ofcom’s proposal to revoke the licence. Depending upon the urgency of the situation, the period for representation may be very short, possibly a matter of hours.

## **Publication of Sanction Decision**

- 5.16 The Sanction Decision will normally be sent to the broadcaster 24 hours before its publication. Where the sanction includes a financial penalty, the level of the penalty will be omitted. The broadcaster will be notified of the level of any financial penalty immediately before the publication of the decision.
- 5.17 Ofcom will then proceed to publish its decision on Ofcom’s website. A summary of the Sanction Decision will normally be published in Ofcom’s Broadcast Bulletin.
- 5.18 Ofcom’s decision is final.

## **Non Disclosure**

- 5.19 Subject to any relevant considerations, it is essential to the integrity of Ofcom’s processes and its ability to regulate fairly that the parties concerned abide by all Ofcom’s published rules and procedures. These require, for example, that parties to the consideration of a sanction should not disclose any correspondence, documents and other material concerning the consideration of the sanction<sup>34</sup> during the course of the investigation (see text box below).

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<sup>32</sup> See for example section 238 Communications Act 2003, and sections 42 and 111 of the Broadcasting Act 1990.

<sup>33</sup> The precise procedure we will follow will depend on the relevant statutory provisions. For example, the provisions may require a licence holder to be given a second opportunity to make representations before a notice of revocation is served.

<sup>34</sup> 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). Such obligations do not allow the use of exemptions by Ofcom in an arbitrary fashion. Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations and nothing in these Procedures can prevent Ofcom from doing so.

## **Non Disclosure**

Ofcom expects broadcasters to keep all information, correspondence and documents relating to sanctions cases strictly confidential, unless already in the public domain. In particular, Ofcom expects broadcasters to keep strictly confidential any information provided to them by Ofcom as part of the sanctions process, including any provisional indication/decision on the type and level of any sanction to be imposed<sup>35</sup>.

Moreover, once Ofcom has started a sanctions process, the broadcaster should not take any steps which could - whether intentionally or not - compromise or risk compromising, a fair decision on the matter by Ofcom or otherwise constitute, in Ofcom's opinion, an abuse of process. This does not limit what Ofcom can publish in its decision at the end of the investigation.

## **Time limits**

- 5.20 Broadcasters should keep to the time limits specified in these procedures. The time limits may be extended or shortened, in appropriate circumstances, at Ofcom's discretion. Any broadcaster requiring an extension to a time limit should explain in writing to Ofcom why it believes the relevant time limit should be extended.

## **Failure to follow procedures**

- 5.21 Any failure by a broadcaster to follow these procedures may result in Ofcom taking additional regulatory action.

## **Procedure for issuing directions in non-sanctions cases**

### **Directions**

- 5.22 Ofcom has the power under the Broadcasting Acts to issue a direction pursuant to a broadcaster's licence. Normally such a direction will only be issued in circumstances where a broadcaster has seriously breached or, in Ofcom's view, failed to comply in a timely manner, with any relevant requirement. This does not apply to the BBC or S4C and is limited to persons holding licences issued under the Broadcasting Acts.
- 5.23 If it is considered appropriate, Ofcom will issue such a direction. A Notice of Direction will then normally be published in Ofcom's Broadcast Bulletin.
- 5.24 Failure to comply with a direction issued by Ofcom pursuant to its licence can lead to the consideration of statutory sanctions (e.g. the imposition of a financial penalty, or the revocation of a licence). In such cases, the procedure will be as set out above in paragraphs 5.7 to 5.13.

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<sup>35</sup> 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 broadcaster will be notified that relevant material has been withheld and the reasons why.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 11 February 2011**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/broadcast-complaints-review/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [Procedures.Review@ofcom.org.uk](mailto:Procedures.Review@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Susan Naisbitt  
Content & Standards  
5th Floor  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if in your response you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.6 If you want to discuss the issues raised in this consultation, or need advice on the appropriate form of response, please contact Anna Lucas on 020 7981 3130.

## Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>.

### Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in March 2011.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email or post you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: **Review of procedures for handling broadcasting complaints, investigations and sanctions**

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing  Name/contact details/job title

Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)