



# Revising the penalty guidelines

Statement

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## About this document

Ofcom is required by law to publish guidelines setting out how it proposes to determine the amount of the penalties which it imposes. Ofcom must have regard to these guidelines when setting the amount of any penalty, other than penalties for breaches of competition law.

In July 2015, Ofcom published a consultation proposing to amend the guidelines. Having carefully considered the responses received, Ofcom sets out its decisions in this document.

The revised penalty guidelines we have decided to issue have been published today on our website (a copy of which can be found in the Annex to this statement).

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## Section 1

# Executive summary

- 1.1 Section 392 of the Communications Act 2003 (the “2003 Act”) requires Ofcom to publish guidelines on our policy in determining the amount of any penalty we impose, other than penalties imposed under the Competition Act 1998,<sup>1</sup> and to have regard to the guidelines for the time being in force when determining the amount of any penalty.
- 1.2 In July 2015, we published a consultation in which we proposed to amend the guidelines, to clarify our approach to setting penalties.<sup>2</sup> In our provisional view, a stronger deterrent effect was needed to help reduce the continuing levels of complaints to Ofcom and contraventions of regulatory requirements. In particular, we considered that it might be necessary in appropriate cases to set higher penalties on the relevant regulated bodies than in previous cases.
- 1.3 The consultation closed on 24 September 2015. Having carefully considered the responses received, we set out our decisions regarding amending the penalty guidelines in this statement.
- 1.4 We have decided to adopt the guidelines substantially as proposed in the consultation. The revised guidelines have been published today and take effect immediately. They will be applied to future investigations and to current ongoing investigations, where we have not yet served a provisional penalty notification.

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<sup>1</sup> For penalties for breaches of competition law, we, and similarly the sectoral regulators with concurrent competition law powers, apply the CMA’s guidelines: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284393/oft423.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284393/oft423.pdf).

<sup>2</sup> See <http://stakeholders.ofcom.org.uk/consultations/penalty-guidelines-15/>.

## Section 2

# Revising the penalty guidelines

## Background

- 2.1 Ofcom has general duties under the 2003 Act to further the interests of citizens and consumers. We have to fulfil these duties when exercising our powers and carrying out our functions.
- 2.2 Ofcom has powers to impose penalties for regulatory contraventions across all areas in which it exercises functions, including telecoms, broadcasting (including on-demand programming), postal services and spectrum. The statutory maximum penalty we can impose differs from contravention to contravention. For example, for some contraventions it can be the higher of a fixed sum or a percentage of relevant turnover of a business. For other contraventions, the maximum penalty is simply a fixed sum, such as £2 million.
- 2.3 Ofcom has discretion about the level of penalties which it imposes, within the limits set by statute and subject to requirements that penalties are appropriate and proportionate to the relevant breaches. Section 392 of the 2003 Act requires Ofcom to publish guidelines on our policy in determining the amount of any penalty we impose, other than under the Competition Act 1998, and to have regard to the guidelines for the time being in force when determining the amount of a penalty.
- 2.4 Our penalty guidelines set out the approach we propose to follow in determining the amounts of penalties in each particular case, within the relevant statutory limits. They apply across all the areas in which we exercise functions (apart from penalties set under the Competition Act 1998), so they need to be flexible enough to deal with all the various kinds of cases to which they may apply.
- 2.5 The guidelines were last updated in June 2011 (the 2011 guidelines).<sup>3</sup> They set out that Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty, and that the central objective of imposing a penalty is to deter breaches of regulatory requirements. They describe a number of potentially relevant factors we may take into account in making our determination.
- 2.6 In our July consultation, we explained that our experience of applying the 2011 guidelines suggested that the level of penalties imposed under those guidelines may not have created a sufficient deterrent effect to ensure effective compliance with relevant regulatory provisions. This was of particular concern in relation to enforcement action related to consumer protection that we have taken in the telecoms sector.
- 2.7 We reported the number of cases and enforcement actions we had taken for contraventions of the General Conditions and for persistent misuse of electronic communications networks or services since the 2011 guidelines came into effect. We also considered whether the level of penalties we had imposed were of a sufficient level to deter against non-compliance, noting the number of cases we had investigated and data about the numbers of complaints about communications

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<sup>3</sup> <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/archived-penalty-guidelines/2011-penalty-guidelines>.

providers made to us by consumers. We provisionally concluded that there was scope for Ofcom to make consumer protection enforcement action more effective and to reduce contraventions and the consumer harm they cause.

- 2.8 One way to achieve this would be to adapt our approach to penalties, so that they have a stronger deterrent effect. Our provisional view was that the level of the penalty should be high enough that it can change and correct any non-compliant behaviour and encourage a culture of compliance within the relevant regulated body and other providers in the industry.
- 2.9 The principal changes proposed in the July consultation were to set out more clearly the weight to be attributed to any precedent cases in our decision-making process, to establish a link between deterrence and the size and turnover of the regulated body, to clarify our approach to calculating the harm and/or gain caused by the contravention and to add “seriousness” as an explicit consideration in the penalty assessment. We set out our impact assessment and equality impact assessment in the July consultation. In this document, we set out our decisions, having taken all consultation responses carefully into account.

## Ofcom’s decisions

- 2.10 We received 14 responses to the consultation. Over half of the responses were submitted by companies we regulate and the remainder from third party organisations and individuals. Four respondents supported our proposals (the Communications Consumer Panel and the Advisory Committee on Older and Disabled People (joint response), Ombudsman Services and two individuals). The remainder did not. We also consulted the Secretary of State, who confirmed he had no comments to make on our proposals.
- 2.11 Having carefully considered the responses, Ofcom has now decided to adopt the revised penalty guidelines substantially as proposed. The purpose of revising the guidelines is to secure regulated bodies’ compliance with their regulatory obligations. This would be in the interests of citizens and consumers and our decision is accordingly consistent with our general statutory duties.
- 2.12 Our decision is also consistent with our duty under the Postal Services Act 2011 to secure the provision of the universal postal service. There is no conflict between the adoption of guidelines designed to secure the imposition of appropriate penalties to secure compliance with regulatory obligations and the maintenance of a (compliant) universal service.
- 2.13 The remainder of this section sets out in further detail the principal decisions made and why we have made them. As a starting point, we make a number of general points about Ofcom’s penalty guidelines:
- a) The purpose of the guidelines is to signal to stakeholders the likely approach and considerations relevant to Ofcom’s assessment of the appropriate penalty level. Ultimately, the precise level of a penalty is a matter of regulatory judgement. That approach should not, in our view, consist of a framework of rigid steps or calculations that would prevent us from exercising our discretion appropriately.
  - b) The penalty guidelines are not a mechanism for calculation that enables providers to work out the risks and benefits of a contravention or to identify where risking a contravention may be profitable. We should not take any approach that enables them to do that. It follows also that we do not believe that publishing lists

of indicative penalties or placing greater weight on precedent decisions, as respondents have suggested, would achieve the right outcomes. Such an approach would undermine the central objective of these guidelines, which is deterrence.

- c) Respondents noted that the proposed revised guidelines would be different to approaches taken by other sectoral regulators or in competition law. We note, however, that in assessing penalties other regulators generally apply a number of similar factors to those we have decided to set out in our guidelines. Our judgement is that approaching the factors in the way we have decided will enable us to impose appropriate and proportionate penalties across all the sectors that we regulate.
- d) We will continue to be transparent in our decisions and present reasonable and reasoned decisions, taking into account relevant considerations and following due process. For example, relevant considerations in cases involving broadcasting content standards will continue to include exercising our duties taking account of Article 10 of the European Convention on Human Rights, which provides for the right to freedom of expression. Providers will generally have an opportunity to comment before penalties are imposed, where appropriate. There should therefore be no loss in transparency in revising our approach, a concern which respondents have raised.
- e) The responses we received also suggested that some respondents had misunderstood how we proposed to amend our approach. The revised penalty guidelines will not be a “one-size-fits-all approach”. It is not the intention that we would simply uplift all penalties across the board for all types of contraventions in all sectors. Instead, the changes would enable us, in the appropriate circumstances, to increase penalties to achieve a greater deterrent effect, where that is needed. That may not be necessary in each case. We would also consider the sanctions and other enforcement actions available to us, as we do currently, before determining whether and what level of level of penalty is appropriate.

## General comments

- 2.14 Many responses raised objections both on the proposals generally and on specific issues. We deal first with the general comments, before addressing the more specific comments below.
- 2.15 A key argument raised by respondents was that the proposed changes were unnecessary and inappropriate, and that there was limited evidence or no basis to justify changing the approach. We disagree with these comments. It is clear to us that there is scope for improvement in compliance. It does not appear to us that doing nothing (that is, retaining the 2011 guidelines) is an appropriate option, in view of the continuing levels of regulatory contraventions and complaints. Our decision enables us to impose higher penalties than in previous cases, where it is appropriate and proportionate to do so, taking into account all the relevant circumstances in the round to achieve the necessary deterrent effect. As noted above, this may not be the case for each contravention.
- 2.16 A number of respondents also considered that we had failed to adequately consider the impact of proposed changes and disagreed that there would be no or limited impact on providers. For example, Royal Mail stated that the changes would have a disproportionate effect on the postal sector because it had lower margins compared to providers in other sectors. A number of respondents, including BT, EE and

Vodafone, argued that higher penalties would ultimately lead to detrimental effects on consumers and competition, because the money would not be invested in services. These sorts of comments appear to us to be incorrect.

- 2.17 Where the regulated body complies with its regulatory obligations, there should be no impact on it. A provider can avoid the costs of a contravention and what it claims is the inevitable passing-on of those costs to consumers by avoiding the contravention in the first place. If a provider breaches regulatory requirements and then increases its prices as a result of a penalty imposed on it, it risks losing customers to competitors who comply with their regulatory obligations. This appears to us to be entirely appropriate and should act as an incentive to achieve regulatory compliance.
- 2.18 We do not agree with the view that providers which do not comply with the law, which in itself is likely to cause harm to consumers, should be absolved from the full extent of a penalty which is appropriate and proportionate to the contravention because it affects their business. The very point of an appropriate penalty is to influence positively a business's behaviour.
- 2.19 Several respondents queried the date from which the revised guidelines would have effect, asserting that they should not apply to misconduct occurring before that date. They claim that to do so would amount to retrospective application of the revised penalty guidelines. We have carefully considered whether the revised penalty guidelines should apply in this way and do not agree with the representations made by respondents in this regard for the following reasons.
- 2.20 A provider subject to the guidelines would have their misconduct assessed on the basis of the substantive regulatory provisions and maximum statutory penalties applicable at the time it occurred. There is no retrospectivity or unfairness in that regard.
- 2.21 Moreover, the approach reflects the statutory obligation in section 392(6) to have regard to the guidelines for the time being in force when determining the amount of any penalty. The revised guidelines will accordingly apply both to future investigations and to current ongoing investigations, where Ofcom has not yet served a provisional penalty notification where that is required. They may therefore apply to conduct which took place before today's date.

## Comments on specific issues

- 2.22 The general comments we make above address a number of the specific issues raised by respondents. We address the remainder below.
- 2.23 First, we have re-ordered the factors which the guidelines say we may consider in assessing penalties. This is not, however, to attribute different weights to them, but to present them in the order in which we would normally consider them in practice.

### Weight to be attributed to precedent decisions

- 2.24 In the July consultation, we proposed to make clear that precedents are likely to become less relevant to future enforcement work over time, and that Ofcom might impose higher penalties in future cases to secure effective deterrence.
- 2.25 Respondents to the consultation recognised that precedents are not binding on future decisions, and that they do not specify or limit the likely eventual fine a future provider may receive. We also note that the Communications Consumer Panel and

the Advisory Committee on Older and Disabled People stated, in support of the proposal, that precedents should not constrain future penalty levels for telecoms breaches given the fast-moving nature of the sector.

- 2.26 Ofcom has decided to adopt this proposal with one amendment. In reaching our decision, we took account of the fact that previous precedent cases have not been fully effective, because contraventions of regulatory requirements continue to occur. The amendment we have made reflects that where relevant precedents exist, we will consider them but may depart from them where necessary. The relevant paragraphs in the penalty guidelines have been changed to: *“Ofcom ~~may~~ will have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and context of each case.”*

#### Link between deterrent effect and size and turnover of regulated body

- 2.27 The July consultation proposed that there should be an explicit link between the deterrent effect and the size and turnover of the regulated body. Respondents raised a number of objections, which Ofcom has carefully considered. They stated that it was unfair and arbitrarily punitive to impose a higher penalty for a similar breach on a larger provider than on a smaller provider. They also argued that this link would not achieve the desired deterrent effect, and instead it would undermine transparency and send the wrong signals to industry.
- 2.28 Ofcom has decided to adopt this proposal. We consider that penalties should be set at levels which can impact and change behaviour by the relevant provider and industry in order to achieve the necessary deterrent effect. It appears to us to be reasonable that a penalty may, in some cases, need to be higher for larger providers, compared to smaller providers, in order to have an equivalent impact on them.
- 2.29 In our view, turnover is a good indicator, taken into account alongside other relevant factors, of the kind of penalty required to secure the appropriate deterrent effect. We also note that turnover is a well-established reference point for setting penalties in many areas, including in some of the sectors we regulate. We also refer to the size of the relevant regulated body, because in some cases it may be appropriate to look at that parameter (for example, where we cannot obtain reliable turnover data). As already noted, an increased deterrent effect may not be needed in all cases and our assessment of the level of penalty will depend on our consideration of other relevant factors, such as the degree of harm caused.
- 2.30 We also clarify that, subject to the applicable statutory framework in the relevant case, we would generally regard a regulated body's total turnover (that is, across all the areas in which it is active) as the appropriate reference point for assessing the level of the penalty. We do not agree that we should consider penalties by reference only to the turnover of the particular part of the business which infringed the regulatory requirement and which, in some cases, could be relatively small. In our view, to do so would undermine the general objective of imposing a penalty, which is deterrence.

#### Calculating harm and/or financial gain

- 2.31 Our practice under the 2011 guidelines has been to consider the degree of harm caused by the contravention, whether actual or potential. Harm can manifest itself in a number of ways, including financially or through other means such as wasted time or distress. The 2011 guidelines also set out that we may consider any gain made by the provider as a result of the contravention, whether financial or otherwise.

- 2.32 In the July consultation, we proposed to clarify that in cases where we quantify the harm or gain, this will only be one factor in our assessment and will not be determinative of the eventual level of the penalty. We did not propose to change these factors per se, or alter our practice, which some respondents raised concerns about. We would continue to assess harm and/or gain, where relevant and appropriate.
- 2.33 The proposal was to make clear that these are only some of the relevant factors in our assessment. The eventual amount of any penalty may be greater than our calculation of any harm or gain. This is because a penalty is imposed to penalise wrongdoing by the provider, and deter non-compliance, and is not merely to remove the gain or “balance out” the harm. For these reasons, Ofcom has decided to adopt this proposal.

#### Adding “seriousness” as a factor

- 2.34 The July consultation proposed to add “seriousness” as an explicit consideration to the penalty assessment. As the 2011 guidelines already stated the amount of any penalty is calculated with regard to the seriousness of the infringement, the proposed change was intended for clarity and completeness. One respondent was unclear how this factor would be assessed when the other factors (such as degree of harm and duration of the contravention) already go to assessing seriousness.
- 2.35 Although other factors are relevant to the “seriousness” of a contravention, Ofcom’s view is that the nature, quality or gravity of a contravention is, by itself, of relevance. Ofcom has therefore decided to adopt this proposal. In reaching this decision, we have had regard to the fact that it is not intended to result in any additional or arbitrary penalisation.

#### Former separate annex on Channel 3 licensee compliance

- 2.36 The July consultation proposed to remove Annex 1 to the 2011 guidelines. This annex dealt with Ofcom’s approach to penalties for breaches of licence conditions in relation to network programming complied on behalf of the regional Channel 3 licensees. In our provisional view, the annex no longer served a useful purpose.
- 2.37 The Channel 3 licensees submitted there are instances where programming is commissioned for broadcast on the Channel 3 network and subjected to a compliance assessment by one Channel 3 licensee, or by a third party, on their behalf. They considered that there remained a need for guidance, albeit updated and simplified, and suggested that they liaise with Ofcom separately to the consultation.
- 2.38 Other respondents suggested that the annex contained matters of general application and should therefore be retained. As the annex has not applied to providers other than the Channel 3 licensees, our view is that it is unnecessary to retain it. We have therefore removed it from the revised guidelines and will discuss the matters raised by the Channel 3 licensees with them separately.

#### Other points raised

- 2.39 Respondents also raised a number of other points not addressed in our comments above. In respect of those points:
- One respondent stated there should be a cost for making complaints, where the complaint is dismissed, to discourage vexatious complaints. We do not agree

with this suggestion and are of the view, consistent with our duty to protect consumers, that they should be able to complain without restriction. Ofcom will then assess whether a complaint has merit.

- A number of respondents suggested that there should be discounts on the level of the penalty for self-reporting and cooperation with our investigations. They also asked whether we could explain the matters we would consider as part of whether a provider has cooperated. We have not made any amendments on these points in the revised guidelines. Our view is that the penalty guidelines, as set out, are designed to enable us to take into account the behaviour of a provider where that is relevant. A provider can act in a number of ways when they are subject to an investigation and we expect them to act in a way that facilitates the timely and efficient conduct of an investigation. Where we consider that a provider's conduct has been relevant to our investigation and should be taken into account in the level of the penalty, we will set this out in the provisional notification and providers will have the opportunity to make representations in response.
- Several respondents suggested that we should differentiate in the penalty guidelines between deliberate or negligent breaches, on the one hand, and inadvertent or unintentional breaches, on the other. However, respondents also noted that deliberate breaches are rare. We note that the fifth bullet of paragraph 12 of the revised penalty guidelines states that the extent to which a contravention occurred deliberately or recklessly is a potentially relevant factor which we may take into account in appropriate cases. We therefore consider the points raised by respondents to already be adequately addressed and have not made any further amendments to the guidelines in this regard.
- One respondent considered that we should allow a provider to make reparations to its customers instead of paying penalty (for example, in the same way that rail companies may commit to improving customer information or increase staffing levels). Our view is that any such reparations or improvements would not obviate the need for an appropriate penalty. Providers should be penalised for wrongdoing and, where appropriate, be required to rectify flaws or issues in their processes which have led to the contravention. We note that this mirrors the position provided for by a number of relevant statutory provisions, such as sections 96A – 96C and 128 – 130 of the 2003 Act, which provide for the taking of remedial steps by regulated bodies and the imposition of penalties on them.
- One respondent suggested that we publish penalties as percentage of turnover, which might show consistency in our approach. We do not publish these details because a provider's relevant turnover for the purposes of setting a penalty tends to be confidential.
- One respondent suggested that we add a provision for cost-reclamation in the penalty guidelines. Penalties received by Ofcom are paid directly to the UK consolidated fund at the Treasury (or, where appropriate, the equivalent consolidated funds in relation to Northern Ireland, the Isle of Man, Jersey and Guernsey) and as such, there is no scope under the current statutory framework for us to provide for cost-reclamation.

## Conclusion

- 2.40 Ofcom has decided to adopt the guidelines substantially as proposed in the consultation. The revised guidelines have been published on our website today (a copy of which is set out in the Annex to this statement) and take effect immediately.<sup>4</sup>

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<sup>4</sup> Published at <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>.

## Annex 1

# Revised penalty guidelines

### Statutory background

1. Section 392 of the Communications Act 2003 (“the Act”) requires Ofcom to prepare and publish a statement containing the guidelines it proposes to follow in determining the amount of penalties imposed by Ofcom under the Act or any other enactment apart from the Competition Act 1998. This statement contains Ofcom’s penalty guidelines.
2. By virtue of section 392(6) of the Act, Ofcom must have regard to the statement for the time being in force when setting the amount of any penalty under this Act or any other enactment (apart from the Competition Act 1998).

### Explanatory note

3. Ofcom has powers to punish those who act unlawfully or in breach of the relevant regulatory requirements. Ofcom has updated the penalty guidelines to clarify its approach to setting penalties. In particular, to ensure that we can impose penalties at the appropriate level effectively to deter contraventions of regulatory requirements, and to explain the weight to be attributed to any precedents set by previous cases in the process of deciding an appropriate and proportionate penalty. Decisions made under the previous penalty guidelines may be relevant to Ofcom’s future decision-making. However, they are likely to become less relevant to future enforcement work over time, and Ofcom may, in light of the circumstances of each case, impose higher penalties in future cases than in previous ones to secure effective deterrence.
4. All businesses should operate in compliance with the law, taking into account any relevant guidelines where appropriate. As such, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.
5. In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level. It should incentivise the management (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole and bring it into compliance, achieving this, where necessary, by changing the conduct at different levels within the organisation. The level of the penalty should be high enough that the management recognises that it is not more profitable for a business to break the law and pay the consequences, than it is to comply with the law in the first instance, and that it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the organisation.
6. A relevant factor in securing this objective of deterrence is the turnover of the regulated body subject to the penalty. Penalties should be set at levels which, having regard to that turnover, will have an impact on the body that deters it from misconduct in future and which provides signals to other bodies that misconduct by them would result in penalties having a similar impact. That is, it must be at a level which can also change and correct any non-compliant behaviour, or potential non-compliant behaviour, by other providers.

7. In making this assessment, Ofcom will have regard to precedents set by previous cases where they are relevant. However, Ofcom may depart from them depending on the facts and context of each case. Our penalty decisions will therefore focus the discussion of precedents to cases we consider particularly relevant, if any.
8. If, in making our assessment in any particular case, we consider that the level of penalties set in previous cases is not sufficient effectively to enforce against the regulatory contravention concerned, and to deter future breaches, Ofcom may set higher penalties under these revised guidelines. Regulated bodies with a large turnover, for example, may be subject to higher penalties in order for a deterrent effect to be achieved. These revised guidelines provide Ofcom with the flexibility to impose higher penalties in appropriate cases and penalties Ofcom has previously imposed should not be seen as placing upper thresholds on the amounts of penalties we may impose.
9. This is not to say there is a direct linear relationship between the size and turnover of the regulated body and the level of the penalty. While a body with a larger turnover might face a larger penalty in absolute terms, a body with a smaller turnover may be subject to a penalty which is larger as a proportion of its turnover, for example. We will impose the penalty which is appropriate and proportionate, taking into account all the circumstances of the case in the round together with the objective of deterrence.
10. Amongst the other relevant considerations we may take into account, Ofcom may consider the degree of harm caused by the contravention and/or any gain made by the regulated body as a result of the contravention. We may seek to quantify those amounts in appropriate cases. However, Ofcom will not necessarily do so in all cases and, even where it does, the calculation does not determine or limit the level of the penalty, which, as explained above, is to ensure that the management of the regulated body is incentivised to modify the behaviour of that body (and deter other regulated bodies accordingly). Any quantified harm/gain is only one of the factors in determining the appropriate and proportionate level of the penalty.

### **How Ofcom will determine the amount of a penalty**

11. Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty.
12. The factors taken into account in each case will vary, depending on what is relevant. Some examples of potentially relevant factors are:
  - The seriousness and duration of the contravention;
  - The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants;
  - Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention;
  - Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention;

- The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur;
  - Whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it;
  - Any steps taken for remedying the consequences of the contravention;
  - Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties); and
  - The extent to which the regulated body in breach has cooperated with our investigation.
13. When considering the degree of harm caused by the contravention and/or any gain made by the regulated body as a result of the contravention Ofcom may seek to quantify those amounts in appropriate cases but will not necessarily do so in all cases.
  14. Ofcom will have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and the context of each case. We will not, however, regard the amounts of previously imposed penalties as placing upper thresholds on the amount of any penalty.
  15. Ofcom will have regard to any representations made to us by the regulated body in breach.
  16. Ofcom will ensure that the overall amount of the penalty is appropriate and proportionate to the contravention in respect of which it is imposed, taking into account the size and turnover of the regulated body.
  17. Ofcom will ensure that the overall amount does not exceed the maximum penalty for the particular type of contravention.
  18. Ofcom will have regard to the need for transparency in applying these guidelines, particularly as regards the weighting of the factors considered.

### **Revision of the statement of policy**

19. Section 392(2) of the Act provides that Ofcom may from time to time revise our statement as we think fit. Ofcom must first consult the Secretary of State and other such persons as we consider appropriate.
20. This statement will be reviewed in the light of experience in applying it over time.

### **Definitions and interpretation**

21. In these guidelines, 'regulated body' means any person or body subject to regulation by Ofcom under any enactment apart from the Competition Act 1998.