

The BBC Charter requires the BBC to set and publish an interim framework for complaints handling by 3 April 2017, having first consulted Ofcom. This interim framework will be in place for six months, and the BBC is required to set and publish, following full public consultation, the final complaints handling framework by 3 October 2017. Ofcom responded to the BBC's draft Interim Complaints Procedures in a letter available below.

# CONFIDENTIAL

22 March 2017

James Heath  
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Kevin Bakhurst  
Group Director  
Content Media Policy Group

Dear James

## **Ofcom response to Interim BBC Complaints Framework and Procedures**

This letter sets out Ofcom's response to the BBC's draft Interim Complaints Framework and Procedures ("the Interim Procedures") ahead of these coming into effect on 3 April 2017. On this date, Ofcom will begin its new responsibilities for independent regulation of the BBC.

We will be writing to the BBC separately setting out information we determine the BBC must publish about the operation and effectiveness of its procedures in relation to relevant complaints, and reports the BBC must provide to Ofcom in relation to complaints it has received.

The Interim Procedures cover three types of relevant complaint falling within scope of Ofcom's regulation: Editorial Complaints, General Complaints, and Complaints about the Allocation of Party Election, Party Political and Referendum Campaign Broadcasts.

Ofcom welcomes the proposed more streamlined complaints system and the integration of the 'BBC First' approach as required under the BBC Charter and Agreement. We acknowledge and welcome the reduction in the number of different procedures and that these have been brought together under one framework. We also welcome that the complaints process has been simplified for editorial complainants. However, we have identified two main areas of concern in the proposed procedures that we consider the BBC should address, in order that the Interim Procedures meet key requirements of the Charter and Agreement. These are outlined below.

Annexed to this letter is a table setting out other comments seeking greater clarity for the reader on the procedures and Ofcom's role under the Charter and Agreement.

### Deadlines for resolution of Editorial Complaints

The BBC Agreement requires that the BBC’s “handling of complaints must be timely”<sup>1</sup>, and that Ofcom must set procedures for handling relevant complaints referred to it, among other circumstances, “if the BBC has failed to resolve a complaint within the time period set in...[the BBC procedures]”<sup>2</sup>. The Interim Procedures state the number of days within which the BBC aims to respond to a complainant at each stage of its complaints process<sup>3</sup>, and do not make clear that a complainant can refer their complaint to Ofcom after a specified time period, if they do not consider that the BBC has dealt with it in a timely way.

We appreciate that there will, in some instances, be investigations which run longer than the planned timeframes and it would not be in Ofcom, the BBC or the complainant’s interests for Ofcom to begin an investigation afresh. We understand, therefore, why the BBC has positioned the timeframes as “aims” within the Interim Procedures. Ofcom expects the BBC to make every effort to complete each stage of its complaints handling within the specified period. We also consider that the BBC should make clear in the Interim Procedures that a complainant can refer their complaint to Ofcom if they do not consider that the BBC has handled it in a timely way, and set clear time periods for each stage of its process to indicate the point at which a complainant can refer their complaint to Ofcom.

### Clarity around general complaints procedures

Ofcom notes that the BBC’s Interim Procedures for general complaints contain little detail about the BBC’s procedures. Ofcom would, for example, expect the BBC to set out more clearly what information it requires to consider different types of complaints, how the BBC expects to investigate complaints, how it intends to gather information and how it will engage with complainants during the process.

In addition, there is a lack of information about two areas which are particularly relevant to Ofcom, as they impact on Ofcom’s complaints handling process. They concern the potential outcome of a complaint (e.g. what the determination will cover, and how it will be communicated to complainants) and the BBC’s timetable for resolving a complaint. The potential outcome of a complaint is relevant, as Ofcom would expect to consider the

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<sup>1</sup> Clause 56(4)(b)(iv) of the BBC Agreement

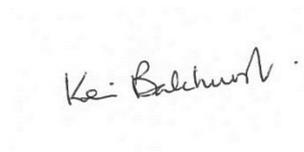
<sup>2</sup> Clause 57(1)(a)(iii) of the BBC Agreement

<sup>3</sup> The draft Interim Procedures state that at Stage 1a the BBC “aims to reply within 10 working days”, while at Stage 1b and Stage 2 the BBC will investigate a complaint and “aims to reply within 20 working days of receipt of your complaint though some complaints take longer than others to investigate. A target of 35 working days applies to those complaints that require longer or more complex investigation.”

determination as part of our enquiry phase and decision as to whether to open an investigation. As with the resolution of editorial complaints, the BBC's timetable is important as third parties can refer their complaints to us if the BBC has not resolved a complaint within the period set out in its procedures<sup>4</sup> (currently this is set out in the BBC's general complaints procedures as a 'a reasonable period').

We consider that the BBC should include further details in its general complaints procedures in relation to both these areas. In particular, we would like to see clear deadlines (even if indicative) for resolving complaints in relation to which Ofcom has enforcement functions. This will ensure some certainty for both complainants and Ofcom as to the timing of our potential involvement.

Yours sincerely,

A handwritten signature in black ink that reads "Kevin Bakhurst". The signature is written in a cursive style and is positioned above a faint, light-colored rectangular stamp or watermark.

Kevin Bakhurst

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<sup>4</sup> Clause 57 (1)(a)(iii) of the BBC Agreement

**Table of proposed amendments**

Issue	Relevant paragraphs	Ofcom comments
<p><b>Clarity on Ofcom’s role</b></p> <p>The Interim Procedures must make clear to complainants the circumstances in which Ofcom will handle a complaint in accordance with the BBC Agreement.</p> <p>There are some paragraphs in which we consider the procedures could more closely reflect the wording of clause 57 of the Agreement, including reference to exceptional circumstances.</p>	<p><b>1.2</b> <i>“When, on exceptional occasions, complainants have gone through every stage of the relevant complaints procedure within the BBC but are still not satisfied with the response, they may be able to appeal to our regulator, Ofcom.”</i></p> <p><b>2.8</b> <i>“Normally Ofcom will consider relevant complaints only if the complainant is dissatisfied with the outcome of the BBC process; if, in light of the outcome, the complainant considers that Ofcom should impose a sanction; or if the BBC has failed to reach a conclusion in a timely fashion.”</i></p> <p><b>5.2</b> <i>“Complaints regarding allocation should be directed to the BBC in the first instance...If the complainant remains dissatisfied, the BBC’s decision can be referred to Ofcom (stage 3).”</i></p> <p><b>5.7</b> <i>Stage Three: Referring a complaint to Ofcom</i></p>	<ul style="list-style-type: none"> <li>• It could be made clearer in paragraph 1.2 that Ofcom will handle relevant complaints in accordance with the BBC Agreement, not just on exceptional occasions.</li> <li>• We consider paragraph 2.8 could more closely reflect BBC Agreement wording.</li> <li>• As with editorial complaints, Section 5 on complaints about the allocation of party election, party political and referendum campaign broadcasts should set out the circumstances in which complaints can be referred to Ofcom under clause 57 of the Agreement, including reference to exceptional circumstances.</li> <li>• In Section 5, links should be provided to both Ofcom’s complaints procedures (<a href="https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures">https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures</a>) and Ofcom’s PPRB disputes procedures (<a href="https://www.ofcom.org.uk/data/assets/pdf_file/0009/16011/pprb-disputes.pdf">https://www.ofcom.org.uk/data/assets/pdf_file/0009/16011/pprb-disputes.pdf</a>) (e.g. at footnote 28)</li> </ul>
<p><b>The BBC’s final response</b></p> <p>The BBC must be clear when it is providing its ‘final response’ to any complaint and explain in that response the circumstances in which and how a complaint can be referred to Ofcom.</p>	<p><b>2.2</b> <i>“However, if, having gone through stages 1a and 1b, you are dissatisfied with the BBC’s final response, we will tell you how to contact Ofcom, which can investigate editorial complaints in the areas covered by the Ofcom Broadcasting Code.”</i></p> <p><b>2.7.1</b> <i>“The finding will include information about how to contact Ofcom if you wish to take your concerns further. If you wish to make comments on the finding, the ECU will consider them so long as</i></p>	<ul style="list-style-type: none"> <li>• We are concerned that paragraph 2.2 does not make clear that complainants go through Stage 2 before receiving a final response, following which they can refer their complaint to Ofcom (as clearly stated under paragraph 2.7).</li> <li>• Paragraph 2.7.1 is unclear as to whether the finding is the BBC’s final response or whether there may be a further response to a complainant’s comments on the finding.</li> </ul>

	<p><i>they are received within 10 working days of the date on which the finding was sent to you.”</i></p>	
<p><b>Clarifying Ofcom’s role for online material</b></p> <p>We consider that in places the procedures could make clearer Ofcom’s different role in relation to complaints about BBC online material and more closely reflect the wording of clause 60 of the Agreement.</p> <p>The BBC will be aware that Ofcom will not be able to consider online material complaints until it has the necessary functions in legislation. We assume that it would make this clear in the interim period to any relevant complainants.</p>	<p><b>2.2</b> <i>“If Ofcom finds that the BBC has failed to comply with the Code, they may direct the BBC to take steps to remedy the failure or prevent a recurrence. It is also open to Ofcom to impose a financial sanction on the BBC for serious or repeated breaches of the Code, up to and including a fine of £250,000.”</i></p> <p><b>2.7.1 Footnote 17</b></p> <p><i>“Except in the case of online text material, where Ofcom must consider and give an opinion on the material concerned (as distinct from reaching a formal finding), and must do so in relation to the BBC’s Editorial Guidelines.”</i></p> <p><b>2.8</b> <i>“The Charter and Agreement provide that Ofcom regulates the content of the BBC’s UK Public Services according to the provisions of the Ofcom Broadcast Code...”</i></p>	<ul style="list-style-type: none"> <li>• The procedures should make it clear that Ofcom’s enforcement powers relate to standards in the content of BBC UK broadcasting and on demand programme services.</li> <li>• Where the draft procedures refer to Ofcom’s role in relation to the BBC’s UK Public Services (e.g. paragraph 2.8) we suggest adding a footnote to clarify Ofcom’s role in relation to online material (which it will consider in relation to the relevant editorial guidelines).</li> <li>• Footnote 17 should refer to “online material” for consistency with clause 60 of the Agreement.</li> </ul>
<p><b>Complaints about the allocation of party election, party political and referendum campaign broadcasts</b></p> <p>This section of the draft procedures could more clearly set out Ofcom’s requirements and the BBC’s process in this area.</p>	<p><b>5.1</b> <i>“The BBC is required to include Party Political (including Party Election) Broadcasts and Referendum Campaign Broadcasts - referred to in this document as PPBs, PEBs and RCBs respectively - in some or all of its UK Public Broadcasting Services, as determined by Ofcom, which will also set out the basis on which they should be included (the latter being referred to as allocation criteria).”</i></p> <p><i>“The BBC will apply Ofcom’s approved allocation criteria to determine allocations...”</i></p>	<ul style="list-style-type: none"> <li>• Paragraph 5.1 should refer to Ofcom’s Rules on Party Political and Referendum Broadcasts (rather than its ‘allocation criteria’). It could more clearly explain that the BBC will apply those rules in determining allocations and the length, frequency and scheduling of broadcasts.</li> </ul>