

Ofcom Consultation – General Procedures for investigating breaches of broadcast licences

1 Summary

1.1 This submission constitutes the response of British Sky Broadcasting Limited (“Sky”) to Ofcom’s consultation on proposals to publish General Procedures for investigating breaches of broadcast licences dated 19 July 2013 (“the Consultation document”).

1.2 Sky welcomes Ofcom’s intention to publish procedures on investigations into possible breaches of broadcast licences but does not agree with the following proposals in the General Procedures:

- The provision of recordings within five working days; and
- The lack of scope for broadcaster comments in the initial stages of an investigation.

2 Do you agree with Ofcom’s proposals to publish the general procedures?

2.1 Sky agrees to the publication of the General Procedure with a view to promoting transparency and efficiency in how Ofcom carries out its investigations.

3 Do you agree with the key changes to our current approach identified at paragraph 2.11 above?

3.1 Sky recognises that the General Procedures largely reflects Ofcom’s current approach to investigating potential breaches of licence conditions and generally agrees with the proposals as set out on in the Consultation document.

3.2 However, Sky has concerns regarding the General Procedures relating to the initial assessment of complaints. In particular, Sky is concerned about the length of time for the provision of recordings and the ability for Ofcom to reach a Preliminary View without consideration of comments from a broadcaster.

Five working days

3.3 At paragraph A1.24 of the Consultation document, it states:

“...recordings of the relevant output/programme(s)...must normally be provided within five working days”.

3.4 Sky notes that Ofcom’s proposal is in line with the Standard Procedures and the Fairness and Privacy Procedures but this is a reduction from 10 working in respect of other categories of broadcasting licence.

3.5 Sky is of the view that five working days is an unduly restrictive timeframe that does not take into account the practical considerations for a broadcaster.

3.6 Sky believes that ten working days to provide a recording is more practicable without compromising transparency and fairness in the investigation process. A longer time period would not significantly disadvantage Ofcom in its effective and efficient decision making. Furthermore, it would allow broadcasters to ensure compliance with the General Procedures where matters beyond its reasonable control occur, such as technical failures and personnel shortage, which would otherwise put them in contravention of the Procedures if it were to remain at five working days.

3.7 Sky is aware that five working days is the relevant time frame stipulated in both the Standard Procedures and the Fairness and Privacy Procedures. Sky is of the view that the time frames in both those Procedures are also too restrictive but limits its comments to the present consultation.

Initial Assessment/Preliminary View

- 3.8 The Consultation document states at paragraph A1.24:
- "At this stage it is not appropriate for the broadcaster to provide written representations".
- 3.9 In the interests of maintaining transparency and a streamlined process, Sky is of the view that in most circumstances it is beneficial to Ofcom to have context around an output/programme(s). With more information from a broadcaster Ofcom is able to take a more effective view of whether a potential breach should be investigated further.
- 3.10 The proposed General Procedures in the Consultation document goes on to state at paragraphs A1.27 and A1.29:
- "...where Ofcom considers it necessary to obtain further information...Ofcom may seek such information..." (emphasis added)
- "On receipt of the broadcaster's representations (where sought), Ofcom will prepare its Preliminary View..."
- 3.11 Sky is concerned that the default position under the proposed General Procedures is that Ofcom will not ask for broadcasters for information relating to the potential breach unless it considers it necessary.
- 3.12 Sky notes that this is a departure from the Standard Procedures where the default position is that Ofcom will ask for information unless considered unnecessary (paragraphs A1.22 and A1.23 of the Standard Procedures).
- 3.13 The effect of this change in the default position means that Ofcom is able to reach a Preliminary View without taking into consideration any representations from a broadcaster. Sky does not believe that this is a fair or transparent process. It believes that information should be provided to Ofcom at an early stage and that Ofcom should invite comments from a broadcaster unless it is of the view that such comments would not assist with making a decision.
- 3.14 In order for a broadcaster to provide relevant and effective comments to Ofcom, at any stage of the investigation process, Ofcom should provide a broadcaster with more information about the nature of the complaint. For example, more information about a complaint will enable a broadcaster to provide Ofcom with a relevant recording rather than an entire programme and provide Ofcom with comments that might enable Ofcom to close the complaint before expanding time and resources on an inevitable non-breach finding.
- 3.15 The upfront provision from Ofcom about a complaint will also ensure transparency, consistency and fairness in Ofcom's decision making.