

Question 1: Do you agree with Ofcom's proposal to publish the General Procedures?:

YES

Question 2: Do you agree with the key changes to our current approach identified at paragraph 2.11 of the consultation document?:

Broadly, YES. But please see our Additional Comments.

Additional comments

We are responding as a broadcaster which is very familiar with Ofcom's current procedures and practice. We have variously made informal comments to Ofcom staff on certain aspects of the procedures, arising out of our own involvement in breach investigations. We therefore welcome Ofcom's invitation to respond to proposals to formally publish the procedures, and to clarify and make minor changes to them.

We agree with Ofcom's proposals to publish the General Procedures.

We broadly agree with the key changes to the current approach which Ofcom has identified in the Consultation document. However, we would like to make some observations and suggestions, which we feel would variously be to the benefit of all of the Stakeholders.

1. We feel it should be a formal requirement that viewers who wish to complain about a programme or channel should be obliged to first make their complaint to the broadcaster. They should only complain to Ofcom if they do not receive any response from the broadcaster, or are not satisfied with the response. This is the practice followed by most regulators, and could obviate a lot of unnecessary cost and effort for Ofcom and broadcasters.

It is almost too easy to complain to Ofcom, and we (and I am sure Ofcom) are aware that as well as sometimes being spurious or out of remit, complaints could often be quickly and simply resolved at an early stage. We accept that there may be justifiable exceptions to this approach (eg Fairness and Privacy issues); but these can be delineated by Ofcom in its "Viewer complaints procedure".

2. The "Complaints Assessed, Not Investigated" listings in Ofcom Broadcast Bulletins could be improved by including the Ofcom Reference assigned to each complaint. It is often difficult for a broadcaster to find, or to correlate, a complaint in the listings with one upon which there may already have been a dialogue between Ofcom and the broadcaster.

3. Where there has been a dialogue between Ofcom and the broadcaster on a specific complaint, typically to request an 'off-air' at the outset, we feel that Ofcom should at least formally inform the broadcaster when Ofcom decides that no investigation is being pursued. The broadcaster has already incurred costs in providing the off-air, and may feel it advisable to begin a detailed consideration of the situation, in anticipation of a possible notification from Ofcom that the complaint is being investigated, and will require a subsequent response to Ofcom within the relatively tight timeframes of Ofcom's KPIs. .

We appreciate that this imposes an extra burden on Ofcom - but a simple email would suffice. As well as eliminating unnecessary costs on the broadcaster, it would enable resources to be focused on those investigations which are being pursued, and speed up responses from the broadcaster.

4. We feel that the "Investigations List" in the Ofcom Bulletin should be complemented by a database on the Ofcom website of "Currently Open Investigations" (also to include the Ofcom Reference). Broadcasters and Ofcom alike would then both be able to easily see what investigations were still ongoing, so avoiding uncertainty on the Broadcaster's part when they have heard nothing from Ofcom even beyond the time periods in Ofcom's KPIs - and it would also benefit Ofcom as a measure of KPI performance itself. It would also improve transparency.

5. We have issues with the fourth bullet point in Paragraph 2.11 of the Consultation. While respecting the need for redaction of matters which should be properly confidential, we feel that Ofcom should be transparent in publishing in full how and why Ofcom has reached its decision, even in non-breach findings.

Most responsible broadcasters (and certainly ourselves) pay close attention to all Ofcom findings, because they are essential learnings for our own compliance. Just as Ofcom expects broadcasters not to redact material relevant to an investigation when we have been asked to supply it, we feel that Ofcom should not itself judge what is 'important' in publishing terms, in arriving at its decision.

This is particularly important when investigations focus on areas of the Rules, Code and Guidance which themselves raise 'grey areas' of uncertainty in a particular investigation, and which are not adequately covered by existing Rules, Codes and Guidance. It is vitally important to broadcasters to understand why Ofcom has reached a decision which may appear, at least superficially, to be at variance with earlier investigations, or even with existing Rules, Codes and Guidance. By analogy, justice would not be served if a court official arbitrarily decided what portions of court proceedings should be made available for subsequent scrutiny. This, we feel, is very important if Ofcom is to be seen to be transparent in its regulation.

6. Broadcaster compliance increasingly requires broadcasters to take account of, and comply with, a growing range of regulators, some of which are accountable directly to Ofcom, and some of which are not. It seems to us that there is a growing range of situations where there is inconsistency arising in reconciling compliance between Ofcom's requirements and those of other regulators. This situation is exacerbated by the blurring of what are pure 'broadcasting' issues, and indeed, even as to what "broadcasting" is, in an era where the internet is facilitating entirely new business models.

We feel there is an urgent need for industry-wide consultation aimed at clarifying, prioritising and as far as possible reconciling, regulatory authority in broadcasting. In the absence of this, there is a danger that broadcasters and Ofcom will seek remedies through legal processes, which does not always serve the guiding principles which must underpin compliance regulation.

We would welcome any discussion with Ofcom, individually or with wider industry participation, on what we hope are constructive comments on the current Consultation.

Fred J Perkins (Chief Executive) September 2013