



Review of procedures for handling broadcasting complaints, cases and sanctions

A consultation on proposals for new procedures for the
handling of standards cases and fairness & privacy complaints
and for the determination of broadcasting statutory sanctions

Consultation

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Section 1

Executive Summary

- 1.1 Ofcom is the body in the UK responsible for issuing licences to television and radio broadcasters. All Ofcom licences contain conditions which broadcasters must adhere to. When Ofcom investigates whether a broadcaster has breached its licence obligations (or in the case of the BBC, a requirement set out in The Agreement¹) it follows certain published procedures. This consultation concerns proposals to change Ofcom's current procedures.
- 1.2 Amongst the licence conditions, broadcasters are required to comply with Ofcom's codes of practice, and in particular, the Broadcasting Code. The Broadcasting Code sets standards for the content of programmes. These standards include rules aimed, amongst other things, at protecting audiences from harmful and offensive material, and at ensuring that those directly affected by programmes are not treated unfairly or have their privacy unwarrantably infringed.
- 1.3 The consideration of complaints from members of the public and subsequent investigation of possible breaches of licence requirements plays an important role in ensuring compliance and that the public is adequately protected.
- 1.4 As part of this, we are required to have in place procedures to deal with complaints we receive from audiences, broadcasters or other interested bodies in relation to broadcast material and compliance with licence conditions.
- 1.5 We currently have three sets of published procedures which explain to members of the public and broadcasters how we deal with a variety of broadcasting complaints, cases and statutory sanctions.
- 1.6 The current procedures for handling complaints about the content of television and radio ("standards complaints"²) and for handling other cases relating to breaches of licence conditions are set out in the **Guidelines for the handling of standards complaints and cases (in programmes, advertising and sponsorship)** (<http://www.ofcom.org.uk/tv/ifi/guidance/standards/>).
- 1.7 The current procedures for handling complaints about unfair treatment or breaches of privacy during the making or showing of programmes and advertising ("fairness and privacy complaints") are set out in the **Outline procedures for handling fairness & privacy complaints** (<http://www.ofcom.org.uk/tv/ifi/guidance/fairness/>).
- 1.8 The current procedures for the consideration and determination of statutory sanctions³ are set out in the **Outline procedures for sanctions in cases relating to broadcasting** (<http://www.ofcom.org.uk/radio/ifi/ifi/guidance/sanctions/>).

¹ 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'.

² The standards that broadcasters must adhere to are set out in Ofcom's Broadcasting Code.

³ 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.

- 1.9 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, and why are we reviewing all three sets of procedures at the same time?

- 1.10 In spite of the periodic revisions to our procedures, we acknowledge that the current documents are not as easy to read and understand as they could be; that it would be helpful to readers if the same operational logic ran through all three documents; and that members of the public and broadcasters could benefit from better understanding how we operate – for example by knowing how long we might take to handle cases.
- 1.11 Furthermore, over the last 18 months we have handled a significant number of increasingly complex cases and imposed an unprecedented number of statutory sanctions on broadcasters. This has given us valuable experience as to how the process could be improved for the benefit of complainants and broadcasters.
- 1.12 Putting these points together, we believe that we have identified a number of areas where we can make improvements to our procedures and to the way we handle cases that will improve the complaints experience for members of the public and broadcasters by allowing us to deliver more effective and timely enforcement.
- 1.13 The most significant changes we propose are to:
- Create more straight-forward processes aimed at dealing with complaints quicker
 - Ensure consistency between all of the procedures
 - Streamline and simplify the current sanctions process and create a Broadcasting Sanctions Committee with the sole responsible for considering and determining statutory sanctions⁴.
 - Streamline and simplify the review process by introducing a comprehensive and consistent review procedure with the possibility of reconsidering decisions of the Ofcom Executive; and
 - Introduce a mechanism closing complaints during the initial assessment process where they clearly do not raise any issues that warrant further investigation;
- 1.14 Minor changes are not specifically identified in this consultation since all three documents have been comprehensively re-written for stylistic and operational consistency. Readers may wish to make comparisons with the current documents via the links provided in paragraphs 1.6 to 1.8 above.
- 1.15 Ofcom is consulting on these revised sets of Guidelines. Written views and comments on the Guidelines are requested by **21 August 2009**. Following the end of the consultation period, Ofcom intends to publish finalised versions of each of the Standards Guidelines, the Fairness & Privacy Guidelines and the Sanctions Guidelines.

⁴ Other than those that may be imposed in respect of licence breaches comprising non-payment of licence fees, which may be handled by the Ofcom Executive: Ofcom members of staff exercising delegated authority

Section 2

Consultation

What is the purpose of the consultation?

- 2.1 In this document Ofcom is putting forward for consultation a set of proposed new procedures for the handling of broadcasting complaints and for the imposition of statutory sanctions on broadcasters.
- 2.2 The purpose of the consultation is to seek views on these new procedures which are designed to improve the citizen, consumer and broadcaster experience of our:
- complaints and investigations into broadcasting standards and other licence-related cases
 - handling of fairness and privacy complaints
 - consideration and determination of statutory sanctions for breaches of licence conditions or other enforceable requirements
- 2.3 Ofcom undertakes many enforcement activities as part of the ongoing programme of work to promote, monitor and investigate compliance of those we regulate across television and radio. Where necessary, we take appropriate action for non-compliance. An important element of our enforcement activities is the handling of complaints from viewers, listeners, broadcasters and other stakeholders. The consideration of complaints and the investigations into possible breaches of our codes, into other licence-related requirements or other enforceable requirements, play an important role in ensuring that the public is adequately protected and that we carry out our duties and functions effectively.
- 2.4 Complaints to Ofcom about matters relating to television and radio serve a number of purposes:
- they are the opportunity for audiences to register a concern about something they have seen on television or heard on radio, or to comment on broadcasting issues and broadcasting content; and,
 - they are the means for an individual who considers he/she has been unfairly treated by a broadcaster to seek redress.
- 2.5 Complaints also enable us to:
- monitor compliance by licensees with the various Codes and other licence requirements;
 - enforce the Codes by gaining evidence for regulatory intervention where compliance failures are demonstrated;
 - monitor public sentiment about the content of radio and TV services; and,

- to help fulfil our general duty to further the interests of citizens and consumers, and to apply standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material, and from unfair treatment and unwarranted infringements of privacy.
- 2.6 Because the enforcement processes, including complaint handling, have the potential to directly affect audiences, broadcasters and other stakeholders in their interaction with Ofcom, it is important that Ofcom ensures that it has published procedures in place for:
- handling complaints;
 - investigating possible breaches of its codes or other licence-related requirements;
 - considering and where appropriate determining statutory sanctions (see footnote 2 on page 2 for definition) that are fit for purpose and which help us to provide adequate protection for citizens and a consistent and robust regulatory framework for broadcasters.
- 2.7 In spite of periodic revisions to our procedures since the establishment of Ofcom in 2003, we acknowledge that the current documents are not as easy to read and understand as they could be and there are changes we can make to improve and to add clarity to the complaints and sanctions processes (see the Rationale for the Proposed Changes at paragraphs 2.30 and 2.31).

Background

- 2.8 Ofcom is the regulator for the UK telecommunications industries, with responsibilities across television, radio, telecommunications and wireless communications services. Ofcom's statutory duties are derived from the Communications Act 2003 ("the Act"), and its principal duty in carrying out its functions is to "further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition".
- 2.9 In relation to television and radio, Ofcom has a broad range of specific duties set out in section 3(2) of the Act, as follows:
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and designed to appeal to a variety of tastes and interests (section 3(2)(c));
 - the maintenance of a sufficient plurality of providers of different television and radio services (section 3(2)(d));
 - the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)); and
 - the application in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both – (i) unfair treatment in programmes included in such services; and (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services (section 3(2)(f)).

2.10 In carrying out those duties, Ofcom is required to have regard to a number of factors set out in sections 3(3) and 3(4) and, of particular relevance to this consultation:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- any other principles appearing to Ofcom to represent best practice;
- the need to secure the application of standards in television and radio in the manner that best guarantees an appropriate level of freedom of expression;
- the opinions of consumers in relevant markets, and of members of the public generally;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection.

Of particular relevance to this consultation, Ofcom has a specific duty under Section 319 of the Act to set standards for the content of programmes to be included in the television and radio services as appear to it best calculated to secure the standards objectives set out in Section 319(2) of the Act. The standards set by Ofcom must be contained in one or more codes. Standards set by Ofcom in accordance with section 319 are set out in Ofcom's Broadcasting Code which was amended and updated in October 2008⁵

2.11 The standards set out in the Ofcom Broadcasting Code include, in summary, rules to ensure that:

- persons aged under 18 are protected;
- programmes do not cause harm or undue offence;
- material likely to encourage or incite the commission of crime is not broadcast;
- the editorial integrity of programming is not distorted for commercial purposes;
- news is presented with due impartiality and reported with due accuracy;
- due impartiality is preserved in dealing with (major) matters relating to political or industrial controversy or (major) matters relating to current public policy ;
- people directly affected by programmes are not treated unfairly or have their privacy unwarrantably infringed.

⁵ The Ofcom Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

2.12 Ofcom ensures compliance by television and radio services with the Broadcasting Code and other Codes established under the Act⁶ through the use of licence conditions. Under the Broadcasting Acts of 1990 and 1996, broadcasters are required to hold a licence issued by Ofcom for the provision of their services and Ofcom ensures that it can carry out its duties effectively by including in those licences a series of conditions and requirements⁷ that it thinks are appropriate. Amongst these conditions is a specific requirement to ensure compliance with the Broadcasting Code and other Codes.

2.13 Licences will also typically include conditions such as:

- requirements for broadcasters to pay licence fees;
- requirements regarding the provision of access services;
- requirements to provide a particular type and quantity of programming or, in the case of radio stations, to adhere to an agreed published 'format';
- requirements for public service broadcast licensees:
 - to ensure that a certain proportion of expenditure on originated programmes should be allocated to programmes produced outside London;
 - to source a certain proportion of programming from the UK
 - to ensure that their transmissions can be received by a specified proportion on the UK population

2.14 With respect to the BBC, Section 198 of the Act confers certain powers on Ofcom which are contained in the BBC Agreement. For instance, Clause 45 of the BBC Agreement states:

The Fairness Code

(1) The BBC must comply with the Fairness Code—

(a) in connection with the provision of the UK Public Broadcasting Services, and

(b) in relation to the programmes included in those services.

(2) "The Fairness Code" means the code for the time being in force under section 107 of the Broadcasting Act 1996.

and Clause 46 of the BBC Agreement states:

⁶ The other Codes are: the Cross-promotion Code, the Code on Access Services, the Rules on Text Size, the Code on the Scheduling of Television Advertising, the Broadcast Committee of Advertising Practice (BCAP) Code and the Electronic Programme Guide (EPG) Code.

⁷ In the case of the BBC and the Welsh Authority (S4C) who do not hold Ofcom licences, these are called "relevant enforceable requirements".

Programme Code Standards

- (1) The BBC must observe Relevant Programme Code Standards in the provision of the UK Public Broadcasting Services.
- (2) “Relevant Programme Code Standards” means those standards for the time being set under section 319 of the Communications Act 2003—
 - (a) which relate to the objectives set out in the following paragraphs of subsection (2) of that section, that is to say—
 - (i) paragraph (a) (protection of persons under the age of eighteen);
 - (ii) paragraph (b) (omission of material likely to encourage or incite any crime or disorder);
 - (iii) paragraph (e) (exercise of responsibility with respect to the content of religious programmes);
 - (iv) paragraph (f) (application of generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material); and
 - (v) paragraph (l) (refraining from use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred), but
 - (b) only to the extent that they do not concern the accuracy or impartiality of the content of any programme included in the UK Public Broadcasting Services.

The Agreement also contains other “relevant enforceable requirements” with respect to the BBC⁸

- 2.15 We normally monitor and enforce compliance with these licence conditions through considering complaints from the public or other organisations directly affected by the programming, initiating our own investigations, and where appropriate imposing statutory sanctions (for example, financial penalties) for failures of compliance. A significant proportion of the enforcement action carried out by us in this area relates to complaints or cases concerning the Broadcasting Code, however we also investigate and can take regulatory action when a broadcaster breaches its licence or other enforceable requirement. Whilst complaints are an important part of our actions in this area, we do not, however, need to receive a complaint in order to start an investigation which may be done at our own initiative.
- 2.16 As part of our duties and functions in relation to television and radio, we are required by the Act to establish procedures for the handling of complaints about matters concerning television and radio. It is of paramount importance that these procedures are written and implemented in ways that benefit citizens, consumers and

⁸ Ofcom and the BBC Trust have a Memorandum of Understanding which helps explain the relationship between the two organisations. This can be found at <http://www.ofcom.org.uk/about/csg/ofcombbc/mou/>

broadcasters, and are not just regulatory documents. We also follow these procedures when initiating and pursuing our own investigations.

- 2.17 Section 325 of the Act deals with 'standards' complaints (complaints about the content of television and radio programming) and gives Ofcom a duty to "establish procedures for the handling and resolution of complaints about the observance of standards set under section 319" (as above).
- 2.18 Section 110 of the Broadcasting Act 1996 (as amended by the Act) deals with fairness and privacy complaints and gives Ofcom a duty to "consider and adjudicate on complaints which ... relate to unjust or unfair treatment in programmes...or to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes."
- 2.19 Ofcom's powers to deal with breaches of licence conditions are set out in the Broadcasting Acts of 1990 and 1996 and the Act (and in the case of the BBC through the Act and The Agreement). Depending upon the type of licence, those provisions typically grant Ofcom the power to direct licence holders to broadcast Ofcom's findings in an investigation, to impose statutory sanctions and, ultimately, to revoke a licence (not in the case of the BBC, S4C and Channel 4). For example, in the case of a television licensable content service licences (typically satellite or cable television services), the Act provides as follows:
- Section 236 of the the Act states that Ofcom may direct the licence holder to broadcast a correction or a statement of findings (or both) or a direction not to repeat a programme on contravention of a licence condition.
 - Under section 237 of the Act, Ofcom may require the licence holder to pay a financial penalty on contravention of a licence condition or an Ofcom direction. The maximum penalty is whichever is the greater of £250,000 and 5% of the licence holder's qualifying revenue.
 - Under section 238 of the Act, Ofcom may revoke a licence if it is satisfied that the licence holder has contravened a licence condition and that it is necessary in the public interest to revoke the licence.

The current procedures

- 2.20 Ofcom currently has three sets of published procedures designed to deal with a variety of broadcasting complaints, cases and statutory sanctions.
- 2.21 The current procedures for handling 'standards' complaints and cases are set out in the **Guidelines for the handling of standards complaints and cases (in programmes, advertising and sponsorship)** which can be found at: <http://www.ofcom.org.uk/tv/ifi/guidance/standards/>. These guidelines, based largely on the guidelines inherited from the former regulators the Independent Television Commission, the Radio Authority and the Broadcasting Standards Commission, have not been substantively revised since they were published in 2004 following public consultation.
- 2.22 The current procedures for handling complaints about unfair treatment or breaches of privacy during the making or showing of programmes and advertising ("fairness and privacy complaints") are set out in the **Outline procedures for handling fairness & privacy complaints** which can be found at:

<http://www.ofcom.org.uk/tv/ifi/guidance/fairness/>. These procedures derive from the relevant requirements of the Broadcasting Act 1996 and were last revised in 2005 following public consultation.

- 2.23 The current procedures for the consideration and imposition of statutory sanctions are set out in the **Outline procedures for sanctions in cases relating to broadcasting** which can be found at: (<http://www.ofcom.org.uk/radio/ifi/ifi/guidance/sanctions/>). The procedures for the considering and determining statutory sanctions were revised at the beginning of 2008 following public consultation.
- 2.24 Ofcom is now proposing to make changes to each of those procedures.

What is the rationale for the proposed changes?

- 2.25 We believe that the fundamental principles of our procedures should be transparency, fairness and proportionality. We also consider that they play an important part in helping ensure that viewers and listeners are adequately protected.
- 2.26 The procedures need to be consistent with relevant legislation, including the following:
- the Act
 - the Broadcasting Acts 1990 and 1996, as amended by the Act
 - Television without Frontiers Directive 89/EEC, as amended by 97/36/EC (updated by the Audio Visual Media Services Directive 2007/65/EC)
 - the Human Rights Act 1998
- 2.27 Our experience over the last eighteen months of applying the current procedures (brought into sharper focus by the recent number of complex cases we have been required to investigate, and by the unprecedented number of statutory sanctions we have applied to broadcasters) has given us valuable experience as to how the process could be improved for the benefit of complainants and broadcasters
- 2.28 Firstly, there are certain procedural and stylistic inconsistencies between the three sets of procedures which we consider should be resolved in order to ensure a consistent approach to enforcement in this area. We have therefore sought to ensure that the draft procedures contained in this consultation document adopt a coherent and consistent approach to the investigation of potential breaches of the Codes and/or licence conditions and the imposition of statutory sanctions. To help ensure this consistency, all three sets of procedures have been completely re-written.
- 2.29 Secondly, we recognise that certain of the procedures may in some respects be overly cumbersome and complex and that some simplification may be appropriate to make them easier to use and to understand, and to deliver more effective and more timely enforcement.
- 2.30 We therefore consider that the interests of citizens and broadcasters as well as our regulatory purposes will be best served by reviewing the procedures to streamline them for the 21st century media environment. We have identified a number of key

changes that can be made to our current procedures which would address the existing deficiencies and produce procedures that reflect the desired fundamental principles and outcomes.

Key proposed changes

2.31 Please note that we have not set out direct 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.

2.32 We propose to:

- Clearly separate the responsibilities of the Ofcom Executive⁹ from those committees of the Ofcom Board in the investigation of breaches (on review) and the imposition of statutory sanctions.
- Make the Ofcom Executive responsible for all first instance decision making in relation to complaints handling and case investigation.
- Create a Broadcasting Review Committee to act as an effective check and balance on the decision making of the Executive.
- Simplify the current review process by introducing a comprehensive and consistent review process allowing parties to request a review by the Broadcasting Review Committee which may lead, where appropriate, to a reconsideration of decisions of the Ofcom Executive.
- Streamline and simplify the current sanctions process.
- Create a Broadcasting Sanctions Committee to be solely responsible for consideration and determination of statutory sanctions other than those imposed for non-payment of licence fees. We are proposing that the Ofcom Executive no longer make recommendations on type and level of sanction other than those relating to non-payment of fees.
- Include in the procedures target times for how long we would expect to take to handle complaints and reach decisions in a number of different scenarios.
- Introduce a mechanism for deciding during the initial assessment process whether Standards complaints should be forwarded for consideration or not. It is proposed that we will always acknowledge the receipt of a complaint, but will write substantively to a complainant only if we decide after an initial assessment that the complaint does raise an issue that warrants further investigation. A complaint which for example, falls outside Ofcom's remit or in Ofcom's view is obviously without merit will not receive a substantive response. This will help Ofcom appropriately target its resources.

⁹ The Ofcom Executive means any relevant member/s of staff employed by Ofcom.

- Introduce a parallel mechanism in the Fairness & Privacy procedures for deciding during the initial assessment process whether Fairness & Privacy complaints should be forwarded for consideration or not.
- 2.33 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. This is reflected in section 7 of the Act, which means that 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.
- 2.34 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 provide more transparent and effective case handling in accordance with our statutory duties and not to create change in our policy approach.
- 2.35 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 we 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

- 2.36 The following sections of the document set out in turn our proposals for new procedures for the handling of:
- Standards and other broadcast licence-related cases
 - Fairness and Privacy complaints; and
 - Statutory sanctions.
- 2.37 Written views and comments on each of the proposed new Procedures are requested by **21 August 2009**.
- 2.38 Following the end of the consultation period, Ofcom intends to publish finalised versions of each of the procedures for the Handling of Standards and Broadcast Licence-related Cases, the Handling of Fairness and Privacy Cases and for the imposition of Sanctions for content-related cases.

Section 3

Guidelines for the handling of Standards complaints and cases

Proposed guidelines for the handling of standards cases in programmes, advertising and sponsorship, and of other licence-related cases

Overview and general information

1. This document outlines the procedures that Ofcom will normally follow when considering complaints or cases relating to any content requirements (whether contained in the relevant Codes set out in paragraph 4 below or concerning other licence-related requirements¹⁰); or other licence-related requirements¹¹ (in the case of Ofcom licensees); or any relevant enforceable requirement (in the case of the BBC or S4C). In this document all these requirements are referred to as “a relevant requirement”). These procedures are effective from **[date to be announced]**¹². Separate procedures apply to the consideration of fairness and privacy complaints¹³.
2. Ofcom has a range of 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 carries out its duties by granting licences, and including in those licences conditions¹⁴ it thinks are appropriate to help it carry out its duties. These conditions include requirements: to pay fees, to provide information, to offer specific programmes and types of content, and to comply with various codes of practice issued by Ofcom.
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

¹⁰ An example of a licence requirement relating to ‘content’ (which is not contained in one of the relevant Codes) is a radio station’s requirement to deliver ‘the proposition’ set out in its published Format.

¹¹ Other than cases involving the non-payment of licence fees (although in such cases Ofcom will usually follow broadly similar procedures). An example of an “other licence-related” requirement to which this document applies is the requirement for broadcasters to provide information about their equal opportunities arrangements.

¹² 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.

¹³ The outline procedures for the handling of fairness and privacy complaints are available on Ofcom’s website at **[weblink to be provided]**

¹⁴ In the case of the BBC and the Welsh Authority (S4C) who do not hold Ofcom licences, these are called “relevant enforceable requirements”.

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.

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; the Electronic Programme Guide (EPG) Code; and, where appropriate, the Broadcast Committee for Advertising Practice (BCAP) Television and Radio Advertising Standards Codes.
5. References to “programmes” in these procedures include teletext, subtitles, and any thing included in television and radio services, other than most forms of advertising¹⁵.
6. References to “broadcasters” in these procedures are to broadcasting bodies regulated by Ofcom or to licence holders providing an Ofcom licensed service, as appropriate.
7. References to “breach” in these procedures are to breaches of a relevant requirement, as set out in paragraph 1 above.
8. 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.
9. Ofcom may in individual cases and at its discretion modify the procedures set out in this document in order to ensure that its complaints procedures can be accessed by all and are non-discriminatory.

Confidentiality

10. It is an essential part of the integrity of Ofcom’s processes and its ability to adjudicate fairly that all parties concerned, including the complainant and broadcaster, abide by all Ofcom’s published rules and procedures. These require, for example, that parties to a complaint should treat all correspondence, documents and other material concerning the complaint as confidential (see text box below).

Confidentiality

Confidentiality is necessary for the proper performance of Ofcom’s functions.

Complainants and broadcasters may normally make public the fact that a standards complaint has been made or that Ofcom is investigating a case. They may also use any information, which, though relevant to the complaint or case, is already in the public domain and available from another source, for a purpose which is unrelated to the case.

However, complainants and broadcasters are subject to the requirement of confidentiality in relation to all other material submitted and

¹⁵ Complaints about advertising and teleshopping are investigated by the Broadcast Committee for Advertising Practice (BCAP), except in the case of political advertising, complaints about fairness and privacy, and complaints or cases concerning COSTA which are investigated by Ofcom.

communications/correspondence entered into in relation to that complaint or case¹⁶. Prior to Ofcom's final decision, the identity of a complainant may only be disclosed by the broadcaster to those with a direct interest in the matter complained of. Moreover, once a complaint has been made or Ofcom has started investigating a case, neither complainant nor broadcaster 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.

Representations from directly affected third parties

11. Individuals or bodies who believe that they may be directly affected by a case may make representations to Ofcom during its investigation. Details of programmes that are being investigated will be published on Ofcom's website, and anyone making a representation of this kind will be expected to do so as early as possible in the investigation. It is to the responsibility of the third party to satisfy Ofcom that it has a sufficient interest in the investigation. In the majority of cases, a third party, (such as a presenter or someone else involved in the production of a programme) will be expected to contribute to the broadcaster's response to a complaint. However Ofcom acknowledges that, occasionally, it may be necessary for a directly affected third party to make representations directly. Ofcom will consider only representations which it deems relevant to its investigation.
12. If Ofcom judges it necessary, the directly affected third party will be provided both with a summary of the complaint(s) (where an investigation results from a complaint) and a summary of any relevant representations which relate to them. The directly affected party will not be given access to the entire case file. Ofcom will give the broadcaster an opportunity to comment on any relevant representations made by the third party. The affected third party is also subject to the requirement of confidentiality in relation to all material submitted and communications/correspondence entered into in relation to the investigation. Failure to follow these requirements may result in Ofcom ceasing to consider the third party's representations.
13. After Ofcom has considered the representations from the directly affected third party, the third party will not be involved any further in the ongoing investigation.

Time limits

14. Complainants and broadcasters should keep to the time limits specified in these procedures. The time limits may be extended, in exceptional 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.

¹⁶ 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.

15. Ofcom's published target is to complete 80% of 'straightforward' investigations within 30 working days. 'Straightforward' cases are those in which Ofcom does not need to contact the broadcaster to deal with the complaint.
16. Ofcom's published target is to complete 80% of 'complex' investigations within 60 working days from the date the complaint is received by Ofcom. 'Complex' cases are those which require investigation with the broadcaster.
17. Where either party requests a review of a decision and that review is granted by Ofcom, Ofcom aims to conclude reviews within 50 working days from receiving the full review request. However the circumstances of individual reviews can vary and completion may in some cases take longer.
18. Where Ofcom is not able to conclude its consideration within the specific time limits it will inform the parties and provide them with an indication of when it expects to be able to do so.

Failure to follow procedures

19. 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 additional regulatory action.

Procedures

Making a complaint

20. Complaints can be made to Ofcom by any person or body who considers that a broadcaster has failed to comply with a relevant requirement, including where they believe that a programme may raise issues under any of the Codes set out in paragraph 4 above. Complaints can, for example, be made about:
 - harmful or offensive material;
 - material which is inaccurate or partial;
 - material which encourages or incites crime or disorder;
 - the protection of those aged under 18; or
 - a radio station failing to deliver 'the proposition' set out in its published Format.
21. 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.
22. Ofcom requests that standards complaints to be submitted on its complaint form. To access the complaint form, go to Ofcom's website at <http://www.ofcom.org.uk/complain/progs/> or contact: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone 020 7981 3000.
23. All complaints about broadcast material 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). A failure to provide these details may mean that it is not possible to identify the programme within a reasonable time and as a result Ofcom may not be able to investigate the complaint.

24. Ofcom will usually not consider anonymous complaints. 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.¹⁷
25. Complainants should submit their complaint about broadcast material to Ofcom within 20 working days of the broadcast of the relevant programme (or of the occurrence of the matter complained of). Ordinarily, Ofcom will not accept a complaint which is submitted after this deadline. Where a complaint is submitted later than 20 working days of the broadcast, complainants should explain why the complaint was not submitted earlier. In deciding whether to investigate a complaint made later than 20 working days after broadcast Ofcom will take into account all relevant factors, including the reason for the delay in submitting the complaint and the fact that broadcasters are only required to keep recordings for a limited time after the date of the broadcast¹⁸.
26. As set out above, Ofcom encourages complainants to complain first to the relevant broadcaster. If the complainant has previously complained directly to the broadcaster and decides subsequently to complain to Ofcom, the complainant should submit any complaint to Ofcom as soon as possible following the final determination made by the broadcaster, and in any event within 20 working days of that determination. In such cases, 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.

Assessing a complaint

27. Ofcom will make an initial assessment of the complaint. If necessary or appropriate, Ofcom may contact the complainant to ask for more information. Ofcom may ask the broadcaster to provide a recording of the programme within five working days. At this stage, it is not appropriate for broadcasters to provide written responses on the substance of the complaint.
28. If Ofcom decides that the complaint raises potential issues that warrant further investigation, Ofcom will follow the procedure set out in paragraphs 29 to 34 below. The assessment and investigation of complaints are carried out by the Ofcom Executive¹⁹. Ofcom will not write to a complainant if it decides that after an initial

¹⁷ Ofcom is a 'prescribed person' under the Public Interest Disclosure Act 1998 and has published guidance at <http://www.ofcom.org.uk/about/account/pida/> on how to make a disclosure to Ofcom under the provisions of this Act.

¹⁸ 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.

¹⁹ The Ofcom Executive means any relevant member/s of staff employed by Ofcom.

assessment a complaint does not raise any potential issues that warrant further investigation (for example, if the complaint is outside Ofcom's remit or the complaint is obviously without merit). However, all such decisions will be listed in Ofcom's Broadcast Bulletin which is available on Ofcom's website at http://www.ofcom.org.uk/tv/obb/prog_cb/

Investigation

29. If, having concluded its initial assessment, Ofcom considers that a complaint does raise potential issues, it will proceed to investigate where it is warranted.
30. If Ofcom decides that no breach has occurred it will write to the complainant and, where appropriate, the broadcaster explaining its decision. The complaint is then closed. The complainant may request a review of the decision (see "Requesting a review" below).
31. Where Ofcom considers, at this stage, that there may be a case for the broadcaster to answer, it will inform the broadcaster and request a written response within 10 working days. At this stage Ofcom will provide details of the complaint to the broadcaster. Ofcom will inform the broadcaster under which relevant requirement it is considering the complaint (including, where applicable, the relevant Code rule). It may also raise issues other than those raised by the complainant and may correspond with the broadcaster more than once in the course of the investigation.
32. Ofcom will then consider the response(s) of the broadcaster and decide whether or not a breach has occurred.
33. Where Ofcom considers that no breach has occurred having taken into account the response of the broadcaster, it will notify the complainant and relevant broadcaster. The complaint is then closed²⁰. The complainant may request a review of the decision (see "Requesting a review", below).
34. Where Ofcom considers that a breach has occurred having taken into account the response of the broadcaster, it will draft a decision for publication. This will take the form of a Provisional Decision.

Provisional Decision

35. Ofcom will normally draft a Provisional Decision if a breach has occurred. In some circumstances, Ofcom may consider it appropriate to draft a Provisional Decision in a case that does not involve a breach or in a case in which a breach has been resolved²¹. Before publication in Ofcom's Broadcast Bulletin, the broadcaster will be sent the Provisional Decision and will have the opportunity to provide comments on factual or typographical errors.

²⁰ Ofcom may decide to publish its decision on a case that does not involve a breach. In such circumstances, the procedure set out in paragraphs 35 and 36, will be followed.

²¹ In some cases, for instance where a broadcaster has taken immediate and appropriate steps to remedy a breach, Ofcom may consider it appropriate not to record a breach, and decide that the appropriate outcome is to determine that the case is 'resolved'.

Publication of decision

36. Having taken account of any such comments, as appropriate, Ofcom will finalise its decision and inform the broadcaster. The decision will be published in Ofcom's Broadcast Bulletin. The complainant(s) will also be informed and the case will be closed. The complainant or broadcaster may request a review of the decision (see "Requesting a review", below).

Requesting a review

37. A complainant or broadcaster may request a review of a decision on whether a breach has occurred.
38. A request for a review must be made in writing to Ofcom within 10 working days of either:
- the date a decision is published in Ofcom's Broadcast Bulletin;
 - in cases where no decision is published, the date a complainant receives notification from Ofcom of the decision.
39. A request for a review must set out each of the ways in which the party believes that the decision is materially flawed, for example if it is believed that the decision is: obviously wrong in substance; or contains a significant mistake of fact; or has been reached following a failure of process.

Grant of a Review

41. The decision whether or not to grant a review will be taken by a member of the Ofcom Executive not previously involved in the case. A review will be granted when the Ofcom Executive considers that the requesting party has put forward a case that a decision is materially flawed and that:
- a) the case has a reasonable prospect of success; or
 - b) there is another compelling reason why the review should be granted.
42. If a review of a decision is not granted then the original decision will stand. Reasons for the decision will be provided to the relevant party. A decision not to grant a review is final.
43. If a review of a decision is granted, and Ofcom considers it appropriate, it may give the other party the opportunity to make written representations in response to the grounds for review accepted by Ofcom.
44. Ofcom will not normally allow further factual material to be submitted as part of a request for review or as part of the response to a request for a review. In exceptional circumstances, Ofcom may however grant permission for further factual material to be submitted. If it does, it will give the other party the opportunity to make written representations on that material.

Broadcasting Review Committee

45. Any review granted will be undertaken by the Broadcasting Review Committee²³ (“the Committee”), a committee of the Ofcom Board, consisting of **[details on structure to be announced]**. The Committee will be provided with the request for review, any response, and all other relevant material (including all material originally before the Ofcom Executive).
46. The Committee will then make its decision independently of the members of the Ofcom Executive involved in the original decision. The Committee may:
 - a) uphold the decision of the Ofcom Executive; or
 - b) quash the earlier decision in whole or in part and remit the decision back to the Ofcom Executive with reasons for the Ofcom Executive to reconsider in light of those reasons; or
 - c) substitute its own decision for the decision of the Ofcom Executive.
47. The decision of the Committee will be sent to both parties. It will also be published in the Broadcast Bulletin. The decision following a review is final.
48. Ofcom aims to conclude reviews within 50 working days from receiving the full review request. However the circumstances of individual reviews can vary and completion may in some cases take longer.

Sanctions

49. If either the Ofcom Executive or the Committee believes that a breach of a relevant requirement may justify consideration of a statutory sanction against the broadcaster, (according to Ofcom’s published criteria for considering statutory sanctions), then the Outline Procedures for Statutory Sanctions in Content or other Licence-related Cases will then apply. These are available on Ofcom’s website at **[weblink to be provided]**.

²³ Information on the role, remit and terms of reference of the Broadcasting Review Committee is available on Ofcom’s website at: **[weblink to be provided]**

Section 4

Handling of Fairness & Privacy complaints

Proposed guidelines for the handling of Fairness & Privacy complaints

Overview and general information

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 **[date to be announced]**²⁴. Separate procedures apply to the consideration of standards complaints²⁵.
2. Ofcom has a duty under section 107 of the Broadcasting Act 1996 (as amended²⁶) (“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.
3. References to “programmes” in these procedures include advertisements, teletext, subtitles, and any item included in television and radio services.
4. References to “broadcasters” in these procedures are to broadcasting bodies regulated by Ofcom or to licence holders providing an Ofcom licensed service, as appropriate.
5. Ofcom may at its discretion modify the procedures set out in this document in individual cases in order to ensure that its complaints procedures can be accessed by all and are non-discriminatory.

Confidentiality

6. 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

²⁴ 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.

²⁵ The outline procedures for the handling of standards complaints and cases are available on Ofcom’s website at **[weblink to be provided]**

²⁶ The Broadcasting Act 1996 was amended by the Communications Act 2003.

complaint should treat all correspondence, documents and other material concerning the complaint as confidential (see text box below).

Confidentiality

Confidentiality is necessary for the proper performance of Ofcom's functions, particularly with respect to fairness and privacy adjudications, and to enable the parties to prepare their cases fully and candidly.

Parties may normally publicly disclose the fact that a complaint has been made, or is being contested, and broadly what it is about. Parties may also use any information, which, though relevant to the proceedings, is already in the public domain and available from another source, for a purpose which is unrelated to the case.

However, both parties are subject to the requirement of confidentiality in relation to all other material submitted and communications/correspondence entered into in relation to that complaint²⁷. Prior to Ofcom's final adjudication, the identity of a complainant may only be disclosed by the broadcaster to those with a direct interest in the matter complained of. Moreover, once a complaint has been entertained, neither party should take any steps which could – whether intentionally or not – compromise, or risk compromising, the fair adjudication of the matter by Ofcom or otherwise constitute, in Ofcom's opinion, an abuse of process.

Representations from directly affected third parties

7. Individuals or bodies who believe that they may be 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, and anyone making a representation of this kind will be expected to do so as early as possible in the investigation. It is the responsibility of the third party to satisfy Ofcom that it has a sufficient interest in the investigation. In the majority of cases, a third party (such as a presenter or someone else involved in the production of a programme) will be expected to contribute to the broadcaster's response to a complaint. However Ofcom acknowledges that, occasionally, it may be necessary for a directly affected third party to make representations directly. Ofcom will consider only representations which are relevant to the investigation.
8. If Ofcom judges it necessary, directly affected third parties will be provided both with a summary of the complaint(s) and a summary of any relevant representations which relate to them. The directly affected party will not be given access to the entire case file. Ofcom will give the broadcaster an opportunity to comment on any relevant representations made by the third party. The third party is also subject to the requirement of confidentiality in relation to all material submitted and communications/correspondence entered into in relation to the investigation.
9. After Ofcom has considered the representations from the directly affected third party, the third party will not be involved any further in the ongoing investigation.

²⁷ 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

Time limits

10. Complainants and broadcasters should keep to the time limits specified in these procedures. The time limits may be extended, in exceptional 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.
11. Ofcom aims to make a decision on whether a complaint is within remit and should be entertained (an Entertainment Decision) in respect of all investigations within 20 working days of receipt of a completed complaint form.
12. Ofcom's published target is to complete 80% of provisional decisions in 'straightforward' investigations within 80 working days. Straightforward cases are those complaints adjudicated upon following one exchange of written statements or complaints resolved by way of 'appropriate resolution'.
13. Ofcom's published target is to complete 80% of provisional decisions in 'complex' investigations within 130 working days. Complex cases are those adjudicated upon following two exchanges of written statements and/or a hearing.
14. Where either party requests a review of a decision, Ofcom aims to conclude reviews within 50 working days from receiving the full review request. However the circumstances of individual reviews can vary and completion may in some cases take longer.
15. Where Ofcom is not able to conclude its consideration within the specific time limits it will inform the parties and provide them with an indication of when it expects to be able to do so.

Failure to follow procedures

16. 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.

Procedures

Making a complaint

17. 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).
18. 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.
19. 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.

20. Complainants should submit their complaint to Ofcom within 20 working days after broadcast of the relevant programme. Ordinarily, Ofcom will not accept a complaint which is submitted after this deadline. Where a complaint is submitted later than 20 working days after broadcast complainants should explain why the complaint was not submitted earlier. Ofcom will then weigh up all relevant factors (including the complainant's explanation for the delay in submitting the complaint) and decide whether or not it is appropriate for it to consider the complaint despite the delay in its submission.
21. As set out above, Ofcom encourages complainants to complain to the relevant broadcaster in the first instance. If the complainant has previously complained directly to the broadcaster and decides subsequently to complain to Ofcom, the complainant should submit the complaint to Ofcom as soon as possible following the final determination made by the broadcaster²⁸, and in any event within 20 working days of that determination. In such cases, Ofcom will expect the broadcaster to retain the relevant recordings and any related material for the periods required by statute²⁹ from the date on which the broadcaster may reasonably expect the complainant to have received the broadcaster's final determination.

Assessing a complaint

22. 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. At this stage, it is not appropriate for broadcasters to provide written responses on the substance of the complaint.
23. Ofcom will then decide whether or not to entertain the complaint. This decision is called the Entertainment Decision and is made by the Ofcom Executive³⁰.

Entertainment Decisions

As explained above, fairness and privacy complaints are complaints about unjust or unfair treatment in programmes, or about unwarranted infringement of

²⁸ 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).

²⁹ 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.

³⁰ Ofcom Executive means any relevant member/s of staff employed by Ofcom.

privacy of people in programmes (or in connection with the obtaining of material included in).

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 and may have been the subject of the alleged unfair treatment; or
- b) whether a participant or not, had a sufficiently direct interest in the subject matter of that alleged unfair treatment; and/or,
- 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 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.

- 24. The complainant and the broadcaster will be provided with a copy of Ofcom’s Entertainment Decision indicating whether Ofcom will be proceeding with a consideration of the complaint. In the event that either party is dissatisfied with the Entertainment Decision, it may request a review (see “Requesting a review” below).
- 25. 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 standards matter the Outline Procedures for the Handling of Standards Complaints and Cases will apply, which are available on Ofcom’s website at: **[weblink to be provided]**).

Representations

- 26. If a complaint is entertained by Ofcom, the relevant broadcaster will be asked to provide either a proposal for ‘appropriate resolution’ or a statement in response to the complaint within 20 working days.

27. Where a broadcaster provides a proposal for 'appropriate resolution', the complainant will be given 10 working days to confirm whether or not to accept the proposal. Examples of such resolutions include, but are not restricted to, the publication of a statement explaining, clarifying or adding to the content of the broadcast, an apology or correction in writing and/or broadcast, the editing of a programme for future broadcasts, and an undertaking not to repeat the programme.
28. Ofcom will not proceed with the consideration and adjudication of a complaint if the resolution that is proposed is accepted by the complainant. If the resolution is not accepted, the broadcaster must provide a statement in response to the complaint within a further 20 working days of the date on which it is informed of the complainant's rejection.
29. On receipt of the broadcaster's statement, Ofcom will provide a copy of it to the complainant.
30. Ofcom will then decide whether it requires further written submissions in order to adjudicate fairly on the matter. If so, the complainant will normally be given 10 working days to comment on the broadcaster's statement. The complainant's comments will be copied to the broadcaster, who will normally be expected to respond within a further 10 working days.
31. In some circumstances, Ofcom may decide to hold a hearing before reaching a decision if it considers that a hearing will advance its understanding of the case, or if it is necessary to ensure that the proceedings are fair. 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. Hearings may take place in England, Northern Ireland, Scotland, or Wales, as appropriate.

Hearings

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.

The procedure at the hearing will be at the discretion of Ofcom, but will normally be as follows:

- representative of Ofcom explains the proceedings;
- the complainant briefly summarises his or her case (normally up to 10 minutes);
- the broadcaster briefly summarises its case (normally up to 10 minutes);
- representative(s) of Ofcom may put questions to the broadcaster and/or the complainant;
- at Ofcom's discretion, the parties may ask each other questions;
- the broadcaster then makes a brief final statement (normally up to five minutes); and
- the complainant then concludes with a brief final statement (normally up to five minutes).

Unsolicited material

32. 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.
33. 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 it³¹.

Disposal

34. 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.
35. The complainant and the broadcaster will be provided with a copy of Ofcom's Disposal Decision. In the event that the complainant is dissatisfied with the Disposal Decision, they may request a review (see "Requesting a review" below).

Provisional Decision

36. Once all the required evidence has been gathered, Ofcom will conclude its consideration of the complaint by making a Provisional Decision. Provisional Decisions will be made by the Ofcom Executive on the basis of written submissions and, where appropriate, oral submissions made at a hearing.
37. The Provisional Decision (i.e. whether the complaint is upheld, not upheld or upheld in part) will be provided with reasons, to both parties. Both parties will then have 10 working days to comment on factual inaccuracies or typographical errors in the Provisional Decision or to submit grounds for a review of the Provisional Decision. If within 10 working days of Ofcom's notification to the parties of the Provisional Decision neither party requests a review of that decision (see "Requesting a review" below), Ofcom will finalise the decision in the form of an Adjudication which will be sent to both parties.

³¹ 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.

Requesting a review

38. Either party may request a review of an Entertainment or Provisional Decision. The complainant may also request a review of a Disposal Decision.
39. A request for a review must be made in writing within 10 working days of the relevant decision.
40. A request for a review must set out each of the ways in which the party believes that the decision is materially flawed, for example: it is believed that the decision is obviously wrong in substance; or contains a significant mistake of fact; or has been reached following a failure of process.
41. On receipt of a request for review Ofcom will provide a copy to the other party. The other party is not required to make any representations at that time.

Grant of a review

42. The decision whether or not to grant a review will be taken by a member of the Ofcom Executive not previously involved in the case. A review will be granted when the Ofcom Executive considers that the requesting party has put forward a case in respect of some or all of the ways in which it is alleged that the decision is materially flawed, and that:
 - a) the case has a reasonable prospect of success; or
 - b) there is another compelling reason why the review should be granted.
43. If a review of an Entertainment or Disposal Decision is not granted then the original decision will stand and both parties will be informed. If a review of a Provisional Decision is not granted, the decision is finalised in the form of an Adjudication which will be sent to both parties. A decision not to grant a review is final.
44. If a review is granted, the other party will have 10 working days from receipt of the decision to grant a review to submit a written response to the grounds for the review accepted by Ofcom.
45. Ofcom will not normally allow further factual material to be submitted as part of a request for review or as part of the response to a request for a review. In exceptional circumstances, Ofcom may however grant permission for further factual material to be submitted. If it does, it will give the other party the opportunity to make written representations on that material.

Broadcasting Review Committee

46. Any review granted will be undertaken by the Broadcasting Review Committee³² ("the Committee"), a committee of the Ofcom Board consisting of **[details on structure to be announced]**. The Committee will be provided with the request for review, the response, and all other relevant material (including all material originally before the Ofcom Executive). The Committee will normally reach its decision on the basis of the available material. It may also decide to hold an oral hearing if it considers that a hearing is

³² Information on the role, remit and terms of reference of the Broadcasting Review Committee is available on Ofcom's website at: **[weblink to be provided]**

necessary in order to advance its understanding of the case, or to ensure that the proceedings are fair. Where a hearing is considered necessary, the procedure for the hearing will be as set out in the “Hearings” text box above.

47. The Committee will then make its decision independently of the members of the Ofcom Executive involved in the original decision. The Committee may:
 - a) uphold the decision of the Ofcom Executive; or
 - b) quash the earlier decision in whole or in part and remit the decision back to the Ofcom Executive with reasons for the Ofcom Executive to reconsider in light of those reasons; or
 - c) substitute its own decision for the decision of the Ofcom Executive.
48. The decision of the Committee will be sent to both parties. In the case of a review of a Provisional Decision, the decision will be finalised in the form of an Adjudication which will be sent to both parties. The Adjudication is final.
49. Where either party requests a review of a decision, Ofcom aims to conclude reviews within 50 working days from receiving the full review request. However the circumstances of individual reviews can vary and completion may in some cases take longer.

Publication of Adjudications

50. Ofcom will normally publish a copy of its Adjudication in its Broadcast Bulletin.
51. If a complaint is upheld or partly upheld, then 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.

Sanctions

52. In addition to the adjudication of the complaint, if either the Ofcom Executive or the Committee believes that a fairness and privacy adjudication against a broadcaster may justify consideration of a statutory sanction against the broadcaster, (according to Ofcom's published criteria for considering statutory sanctions), then the Outline Procedures for Statutory Sanctions in Content or other Licence-related Cases will then apply. These are available on Ofcom's website at **[weblink to be provided]**.

Section 5

Guidelines for statutory sanctions

Proposed guidelines for the consideration of statutory sanctions in broadcasting or other licence-related cases

Overview and general information

1. This document outlines the procedures that Ofcom will normally follow when considering the determination of a sanction³³ against a broadcaster for breaches of any content requirements (whether contained in one of the relevant Codes³⁴ or concerning other licence-related requirements³⁵); or other licence-related requirements³⁶ (in the case of Ofcom licensees); or any relevant enforceable requirement (in the case of the BBC or S4C). In this document all these requirements are referred to as “a relevant requirement”). They are effective from **[date to be announced]**³⁷.
2. Ofcom has a range of 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 carries out its duties by granting licences, and including conditions³⁸ in those licences it thinks are appropriate to help it carry out its duties. These conditions include requirements: to pay fees, to provide information, to offer specific programmes, and to comply with various codes of practice issued by Ofcom.
3. Ofcom has a specific duty under section 319 of the Communications Act 2003 (“the Act”) to set standards for the content of programmes in television and radio services in the form of codes of practice. Ofcom also has a duty under section 107 of the Broadcasting Act 1996 (as amended³⁹) to draw up a Code of practice setting out the

³³ These procedures will not be used for the revocation of a licence resulting from the non-payment of a licence fee. The procedures that Ofcom will follow for the revocation of a licence resulting from the non-payment of a licence will be available on Ofcom’s website.

³⁴ At present the codes in force to which these procedures apply include: the Broadcasting Code, the Cross-promotion Code, the Code on Access Services, the Rules on Text Size, the Code on the Scheduling of Television Advertising, the Broadcast Committee of Advertising Practice (BCAP) Code and the Electronic Programme Guide (EPG) Code.

³⁵ An example of a licence requirement relating to ‘content’ (which is not contained in one of the relevant Codes) is a radio station’s requirement to deliver ‘the proposition’ set out in its published Format.

³⁶ An example of an “other licence-related” requirement is the requirement for broadcasters to provide information about their equal opportunities arrangements.

³⁷ The Outline 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.

³⁸ In the case of the BBC and the Welsh Authority (S4C) who do not hold Ofcom licences, these are called “relevant enforceable requirements”.

³⁹ The Broadcasting Act 1996 was amended by the Communications Act 2003.

principles to be observed and practices to be followed by broadcasters to ensure the avoidance of unjust or unfair treatment in programmes and unwarranted infringement of privacy in programmes in or in connection with the obtaining of material included in programmes (together in these procedures these documents are referred to as “the Codes”). Sections 325 and 326 of the Act require Ofcom to ensure that licences issued to broadcasters under the Broadcasting Acts 1990 and 1996 (“the Broadcasting Acts”) include conditions which require them to comply with the Codes.

4. The BBC is also subject to the 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. S4C⁴⁰) must comply with the Codes.
5. Ofcom’s powers to impose a statutory sanction (“a sanction”) in broadcasting cases apply to the content of all broadcast services (both editorial and advertising⁴¹).
6. 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 on the relevant broadcaster under provisions contained in the Broadcasting Acts⁴². Ofcom’s powers to impose statutory sanctions on the BBC are contained in section 198 of the 2003 Act and its powers in respect of S4C are contained in section 341 of the 2003 Act.
7. References to “broadcasters” in these procedures are to broadcasting bodies or to licence holders providing the licensed service, as appropriate.
8. 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, repeatedly⁴³, or recklessly breached a relevant requirement.
9. 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 a licence (only applicable in certain cases); or

⁴⁰ The Welsh Authority operates its television service under the name S4C.

⁴¹ 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.

⁴² The appropriate provision which empowers Ofcom to impose sanctions for a breach of licence conditions will depend upon the type of licence held.

⁴³ 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

- 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 licencees 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.

10. The imposition of statutory sanctions has been delegated from the Ofcom Board to the Broadcasting Sanctions Committee⁴⁴ ("the Committee"). The Committee consists of **[details to be announced]**. Decisions on whether to impose a sanction and, if so, at what level will be taken by the Committee.

Confidentiality

11. 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 a complaint should treat all correspondence, documents and other material concerning the complaint as confidential (see text box below).

Confidentiality

Confidentiality is necessary for the proper performance of Ofcom's functions with respect to cases where a sanction is being considered.

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 imposed⁴⁵.

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.

Time limits

12. Broadcasters should keep to the time limits specified in these procedures. The time limits may be extended, in exceptional 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.

⁴⁴ Information on the role, remit and terms of reference of the Broadcasting Sanctions Committee is available on Ofcom's website at: **[weblink to be provided]**

⁴⁵ 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

13. Ofcom aims to conclude the consideration of the imposition of a sanction within 60 working days from the date Ofcom records breaches of the relevant requirement. However the circumstances of individual sanctions cases can vary considerably and completion may in some cases take longer.
14. Where Ofcom is not able to conclude its consideration within the specific time limits it will inform the broadcaster and provide them with an indication of when it expects to be able to do so.

Failure to follow procedures

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

Procedures

Referral

16. The consideration of a sanction follows a decision by either the Ofcom Executive⁴⁶ or the Broadcasting Review Committee⁴⁷ that a broadcaster has breached a relevant requirement. A case will normally be referred to the Committee for the consideration of the imposition of a statutory sanction when either the Ofcom Executive or the Broadcasting Review Committee considers that a broadcaster has seriously, deliberately, repeatedly, or recklessly breached a relevant requirement. Before deciding to refer a case to the Committee, the Ofcom Executive or the Broadcasting Review Committee may, at its discretion, invite a broadcaster to submit more representations on a case or any information required from the broadcaster, to assist the understanding of the case or if it is necessary to ensure that the process is fair.
17. In such cases, Ofcom will have written to the broadcaster⁴⁸ enclosing its breach decision, and will have notified it that Ofcom considers the breach to satisfy the grounds for consideration of a sanction.

Consideration of sanctions

18. Once a case has been referred to it, the Chair of Committee will consider all the relevant material in the case. The Chair of the Committee may decide that no sanction is appropriate in a particular case. Where this occurs, the broadcaster will receive a notification to this effect from the Chair of the Committee, and the breach decision previously provided to the broadcaster⁴⁹ will then normally be published in the Ofcom Broadcast Bulletin. If, at this stage, the Chair of the Committee considers that a sanction is appropriate, he/she will write to the broadcaster with the following information:

⁴⁶ The Ofcom Executive means any relevant member/s of staff employed by Ofcom.

⁴⁷ Information on the role, remit and terms of reference of the Broadcasting Review Committee is available on Ofcom's website at: ***[weblink to be provided]***

⁴⁸ Ofcom will already have received representations from the broadcaster on whether a breach of a relevant requirement has occurred.

⁴⁹ As set out in paragraph 17, above.

- details of the breach/es;
 - a summary of the material on which the Chair of Committee has relied in reaching the provisional decision;
 - the Chair of Committee's 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 the Chair of Committee's provisional view on the type and level of any sanction considered to be appropriate and proportionate; and
 - the relevant documentation⁵⁰ that the Chair of Committee has taken into account will also be provided.
19. Where, at this stage, the Chair of the Committee considers that the appropriate sanction should include a financial penalty, then he/she will, as appropriate, consider the penalty in accordance with the Penalty Guidelines published by Ofcom (see <http://www.ofcom.org.uk/about/account/pg/>) and the Precedent List published by Ofcom (see **[weblink to be provided]**) which sets out Ofcom's previous practice with respect to the imposition of statutory sanctions.
20. The Chair of Committee will then invite the broadcaster to make representations on his provisional view of the type and level of any sanction being proposed. Depending on the type and level of any sanction, this may be by:
- the broadcaster's submission of written representations *only* (normally when neither the imposition of a financial penalty or shortening or revocation of a licence is being considered);
 - attendance at a hearing to provide oral representations *only*; or
 - submission of written representations *and* attendance at a hearing to provide oral representations.

Broadcaster representations

21. When invited by the Chair of Committee to make written representations on a sanctions case, a broadcaster should do so within 15 working days, unless otherwise specified. In some circumstances, the Chair of Committee may, at his/her discretion, invite a broadcaster to submit one or more sets of subsequent representations on a case, as he/she sees fit (he/she will also do so in cases where the statutory process requires so). The Chair of Committee may also request any information he/she requires from the broadcaster, to assist its understanding of the case or if it is necessary to ensure that the process is fair.
22. Following consideration of the provisional view put forward by the Chair of the Committee, and of any broadcaster representations in relation to that view, the Committee will take its decision whether or not to impose a sanction. In reaching this

⁵⁰ 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.

decision, the Committee will not be bound by the provisional view of the Chair of the committee.

Hearings

23. In addition to, or in place of, the submission of written representations, a broadcaster may be invited to attend a hearing to make oral representations to the Committee (see paragraph 20, above).

Hearings are held in private and are recorded. The broadcaster may bring legal representation. However, the total representation on behalf of the broadcaster should normally not exceed five people (including legal representation).

The proceedings will be at the discretion of the Chair of the Committee but will normally be as follows:

- the Chair explains the proceedings, outlines the breaches which have occurred and explains the range of potential sanctions which may be imposed in the particular case;
- the broadcaster makes its oral representations (the Chair will determine in advance the duration of these representations, normally limited to 30 minutes);
- members of the Committee may put questions to the broadcaster; and
- the broadcaster then concludes with a brief final statement, normally limited to 10 minutes following which the broadcaster and its representatives leave the meeting.

Disposal

24. After consideration of written and/or oral representations from the broadcaster, the Committee may decide that no sanction is appropriate in a particular case. Where this occurs, the broadcaster will receive a notification to this effect from the Committee, and the breach decision previously provided to the broadcaster⁵¹ will then normally be published in the Ofcom Broadcast Bulletin.

Sanctions decision

25. If, after considering all the evidence including any relevant points raised in any oral representations, the Committee believes that a sanction is appropriate, it shall consider which of the available sanctions is appropriate and will reach a decision to this effect.

Financial Penalty

26. Where the Committee considers that the sanction to be imposed should include a financial penalty, then it will, as appropriate, consider the penalty in accordance with the [Penalty Guidelines](http://www.ofcom.org.uk/about/accoun/pg/) published by Ofcom (see <http://www.ofcom.org.uk/about/accoun/pg/>) and the Precedent List published by Ofcom (see **[weblink to be provided]**) which sets out Ofcom's previous practice with respect to the imposition of statutory sanctions.

⁵¹ As set out in paragraph 17, above.

Revocation of licence⁵²

27. In cases where the broadcaster is an Ofcom licence holder and the Committee considers that the sanction to be imposed should be revocation of the licence, if applicable, the Committee will serve a notice indicating that the licence will be revoked if the steps specified in the notice are not taken. The licence holder will be given a reasonable opportunity to make representations about the matters set out in the notice. What is reasonable will depend on the circumstances and the urgency of the case, but could be no more than 24 hours. 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 licence⁵³. The notice revoking the licence takes effect when it is served on the licence holder.

Publication of a sanctions decision

28. The Committee's decision will be sent to the broadcaster (with the level of any financial penalty omitted), 24 hours before its publication. The broadcaster will then be given the opportunity to comment on factual accuracy, errors or omissions, before publication. Any comments on these issues should be provided to Ofcom within the time specified by Ofcom on any given occasion. The broadcaster will be notified of the level of any financial penalty immediately before the publication of the decision.
29. Having taken into account any such comments from the broadcaster, as appropriate, the Committee will then proceed to publish its decision on Ofcom's website. A summary of the Committee's decision will normally be published in Ofcom's Broadcast Bulletin.
30. The Committee's decision is final.

Procedure for issuing directions in non-sanctions cases

Directions

31. Ofcom has the power under the Broadcasting Acts to issue a direction pursuant to a broadcaster's licence. Such a direction will normally 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.
32. If it is considered appropriate, an executive member of Ofcom's Content Board⁵⁴ will issue such a direction. A Notice of Direction will then normally be published in Ofcom's Broadcast Bulletin.
33. 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 16 to 29.

⁵² See for example section 238 Communications Act 2003, and sections 42 and 111 of the Broadcasting Act 1990.

⁵³ 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.

⁵⁴ Information on the role, remit and terms of reference of Ofcom's Content Board is available on Ofcom's website at: **[weblink to be provided]**

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 21 August 2009**
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/broadcasting/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 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.
- Sara Winter
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 and questions raised in this consultation, or need advice on the appropriate form of response, please contact Ian Blair on 020 7981 3880.

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, 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/account/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in Autumn 2009.
- 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

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 . 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

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.
- 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/.
- 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, cases 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)