

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

The Community Media Association agrees with Ofcom's decision to publish the General Procedures. This can contribute to achievement and demonstration of the principle of consistency in the procedures and the requirements of transparency and accountability.

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

Initial assessment stage

The CMA agrees with the inclusion in the general procedures of an initial assessment stage for cases where Ofcom receives a complaint (rather than own initiative investigations)

Publications

While publication, as a general rule, contributes to the requirement of transparency, the CMA notes that grievances are occasionally brought by vexatious complainants. The publication of every objection and enquiry could possibly lead to an increase in vexatious complaints, leading to a league table of stations that are under investigation. This could have a negative impact on a station's reputation – particularly when considering advertising and sponsorship - and could have a chilling effect on freedom of expression, even in the case where the complaints are manifestly unfounded and are merely part of an orchestrated campaign.

The CMA agrees with publication of a list of all investigations – with the above-mentioned proviso in mind - and of all decisions following investigation (and, where appropriate, the text of the decision).

Time limits for provision of recordings

Standardising the length of time for provision of recordings is reasonable however it should be considered that community broadcasters may not always have the administrative and technical capacity to respond quickly. Some community broadcasters function on an entirely voluntary basis and their ability to respond may also depend on a small number of key individuals. The minimum time to respond should take into consideration the staffing capacity and the ability of each particular station to react. The fallibility of electronic systems of communication should be noted and the CMA recommends that attempts to contact stations should be made using at least one alternative method.

Key performance indicators

The CMA agrees with the introduction of key performance indicators ("KPIs") for both the assessment of complaints and the completion of investigations.

Sanctions procedure

While not indicated as one of the key changes in the consultation by Ofcom it should be noted that the primary goal of a broadcasting code and its associated complaints procedure should be to set standards rather than to punish broadcasters for breaches. Sanctions, where justified for non compliance, should in the first instance aim at reforming behaviour, and so consist of a warning or requirement to broadcast a message recognising the breach. More serious measures, such as fines or suspensions, should be applied only after repeated and serious breaches, when warnings and milder sanctions have failed to redress the problem.

In meeting its obligation to adopt principles that take account of best regulatory practice, Ofcom should ensure its general procedures are consistent with international standards.

According to the UN Human Rights Committee:

"States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant."

UN Human Rights Committee (2011) General Comment No 34, para 39

<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-GC-34.doc>

According to the Council of Europe Committee of Ministers:

"A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law."

Council of Europe Council of Ministers (2000) Recommendation No. R(2000)23, para 23

[http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec\(2000\)023&ExpMem_en.asp](http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec(2000)023&ExpMem_en.asp)

Ofcom's practice and procedure in this area is broadly consistent with these standards but closer attention should be paid to the requirements for reasonableness and proportionality, particularly in relation to sanctions on community broadcasters. Such sanctions should reflect the relative impact of a fine on a social enterprise with a small financial turnover.

According to Ofcom Communications Market Report 2013 the average annual community radio station income is £57,000. Community radio income often includes grants with restrictive conditions and which cannot generally be used to pay fines. The non-restricted revenues of community radios may be less than 50% of their gross income, or under £28,500 average. Any fine that consists of more than 5% of this amount may be considered excessive since it could jeopardise the viability of the enterprise, potentially leading to closure.

Sanctions should also take into account that for community broadcasters judicial review is unlikely to be an available remedy and that even a minor sanction can have reputational impact with a far greater effect than is intended, for example on grant makers' decisions.

Alternative actions to encourage compliance

The general procedures focus on investigation and sanction. More attention could be paid to positive approaches to encourage compliance by community broadcasters – which might also be more cost-effective. These might include, but not be limited to, actions such as:

- regular Ofcom and CMA workshops for community radio stations and other broadcasters on Broadcasting Code compliance and sharing best practice
- Ofcom and CMA to encourage community broadcasters to develop internal ethical codes to build a culture of compliance and to promote better self regulation.

The CMA already requires its members to adhere to the Community Media Charter -

<http://www.commedia.org.uk/who-we-are/charter/> - and, building on that commitment, the CMA could explore with Ofcom the development of sector guidelines and internal ethical codes.

In the medium to long term, Ofcom should consider working with the CMA on the creation of a self-regulatory or co-regulatory mechanism for the community broadcasting sector.