



General procedures for investigating breaches of broadcast licences

Final Statement

Statement

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Section 1

Introduction

- 1.1 Ofcom is the UK body responsible for issuing licences to television and radio broadcasters.
- 1.2 Ofcom has general duties in relation to broadcasting which include securing the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests. Ofcom also has more specific duties in relation to, for example, the provision of subtitling, signing and audio description and the requirement for a commercial radio station to deliver “the proposition” set out in its published Format.
- 1.3 In order to ensure that Ofcom is able to fulfil its duties, all broadcasters must adhere to specific requirements placed in their licence, or in the case of the BBC¹ and S4C², who are not required to hold licences, to any relevant enforceable requirement (taken together these requirements are referred to as “a relevant requirement”). Examples of such relevant requirements can be found in paragraph A1.13 of the General Procedures for investigating breaches of broadcast licences (“General Procedures”) at Annex 1.
- 1.4 Ofcom has produced specific procedures which apply to investigations of breaches of certain categories of regulatory requirement. These specific procedures are listed in the table below. A potential breach of the types shown in the table below would generally be investigated under the corresponding specific procedure.

Category of regulatory requirement	Specific procedure
Content standards objectives set out under section 319 of the Communications Act 2003 and applied in the Ofcom Broadcasting Code and other codes ³ .	Procedures for investigating breaches of content standards for television and radio ⁴ .
Fairness and/or privacy requirements set out under Part 5 of the Broadcasting Act 1996 and applied in the Ofcom Broadcasting Code.	Procedures for the consideration and adjudication of Fairness & Privacy complaints ⁵ .

¹ Through The Agreement with 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 Welsh Authority operates its television service under the name S4C.

³ “Other codes” includes the Cross-Promotion Code, the Code on the Prevention of Undue Discrimination between Advertisers and the Code on the Scheduling of Television Advertising. These codes and the Broadcasting Code can be found on Ofcom’s website at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/?a=0>. It also includes the UK Code of Broadcast Advertising, which can be found at <http://www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>.

⁴ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

⁵ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

Licence conditions and relevant codes to ensure fair and effective competition in the provision of broadcast services ⁶ .	Enforcement Guidelines, Ofcom's guidelines for the handling of competition complaints and complaints concerning regulatory rules ⁷ .
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- 1.5 There have previously been no published procedures which cover how we investigate potential breaches of licence conditions other than those listed in the table above.
- 1.6 On 19 July 2013 Ofcom published a consultation called *General Procedures for investigating breaches of broadcast licences*⁸ ("the Consultation") proposing the introduction of these General Procedures for investigating breaches of broadcast licences and sought views on those proposals.

Why did Ofcom propose the introduction of the General Procedures?

- 1.7 Ofcom may launch investigations on its own initiative as well as investigate complaints made by others. The assessment of complaints about, and investigations into, potential breaches of broadcasters' licences play a crucial role in ensuring that the public is appropriately protected.
- 1.8 To date, Ofcom has followed a procedure for investigating potential breaches of relevant requirements which was not in published form, and this procedure was notified to the broadcaster at the time of the investigation.
- 1.9 It is important that our procedures for carrying out these investigations are as transparent, effective and efficient as possible. We therefore proposed to introduce the General Procedures in order to:
- formalise the procedures and ensure transparency, consistency and fairness in our decision making; and
 - provide clarity to stakeholders on the procedures we will usually follow when conducting investigations of this type.

What were the key proposed changes?

- 1.10 We explained in the Consultation that we expected that broadcasters would be largely familiar with the content of the General Procedures and would recognise similarities in approach to our published Standards Procedures. However, we proposed a number of changes to the way we currently investigate possible breaches of licence conditions.

⁶ The Code on Electronic Programme Guides ("EPG") sets out practices to be followed by EPG providers to: (i) give appropriate prominence for public service channels, (ii) provide features and information needed to enable EPGs to be used by people with disabilities affecting their sight or hearing or both and (iii) secure fair and effective competition (<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>). Generally, Ofcom applies the Enforcement Guidelines for breaches of (iii), and has proposed to apply the General Procedures for breaches of (i) and (ii).

⁷ http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf, paragraphs 2.22 to 2.24.

⁸ <http://stakeholders.ofcom.org.uk/consultations/general-procedures/>

- 1.11 We said that in considering changes to our current approach, Ofcom aimed to ensure that it maintained high quality decision-making and that fairness and transparency (to all stakeholders) continued to be at the heart of the procedures. We said that we considered that the proposed changes fulfilled these two important criteria.
- 1.12 The key changes that we proposed to our existing approach or that differed from our Standards Procedures were to:
- i) **Introduce a new initial assessment stage** in cases where we receive a complaint (but not for own initiative investigations), at the end of which Ofcom would decide whether to open an investigation.
 - ii) **Publish a list of those complaints which have been assessed but not pursued in an investigation.** We proposed that these would be published as a table in Ofcom's Broadcast Bulletin⁹, setting out the name of the broadcaster and its service and describing in broad terms the category of relevant requirement to which the complaint relates (for example, "provision of access services").
 - iii) **Publish a list of all cases we are investigating.** We proposed that these would be published as a table in the Broadcast Bulletin, setting out the name of the broadcaster and its service. We proposed also to make it clear when publishing this information that an investigation by Ofcom does not necessarily mean that the broadcaster has done anything wrong and that not all investigations result in breaches of the licence or other regulatory requirements being recorded.
 - iv) **Publish all decisions following investigation.** For decisions that a broadcaster has breached a relevant requirement, we proposed that we would normally publish the Decision in full (subject to redaction of any confidential information). For decisions that a broadcaster has not breached a relevant requirement, we proposed to publish information about the decision. The amount of information we proposed to publish on non-breach decisions might range from identifying the broadcaster, its service and the category into which the investigation fell, to providing more detailed information on the investigation and our reasons for the decision. We considered that reasons for publishing more information about a particular non-breach decision included, for example, cases where doing so would provide clarification about aspects of the regulatory regime and how we apply it that might be helpful for other broadcasters to be aware of; or if there had been a high level of public interest in the investigation.
 - v) **Standardise the length of time for provision of recordings to five working days.** We noted that this would be consistent with the Standards Procedures and the Fairness and Privacy Procedures and would be a change from existing practice for some categories of broadcasting licence, where the licensee is given ten working days to provide recordings.
 - vi) **Introduce Key Performance Indicators ("KPIs") for both the assessment of complaints** (15 working days) and the completion of investigations (50 working days). We noted that these mirror the KPIs in our Standards Procedures.

⁹ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.

- 1.13 The Consultation asked the following questions:
- i) Do you agree with Ofcom's proposal to publish the General Procedures?
 - ii) Do you agree with the key changes to our current approach, as identified above?
- 1.14 The Consultation closed on 27 September 2013. Ofcom received eight responses. All of the responses are available on Ofcom's website¹⁰.

Ofcom's decisions

- 1.15 Ofcom has now decided that it is appropriate to adopt the General Procedures as proposed in the Consultation, with some changes that we explain in paragraphs 2.35 to 2.41, 2.48 to 2.58, 2.64 to 2.70 and 2.92 to 2.96. We have done so in order to meet our statutory duties, and to ensure that our procedures are fair, effective and transparent, taking into account the range of views, some conflicting, in the Consultation responses.
- 1.16 The purpose of this statement is to address issues raised by respondents and to explain Ofcom's reasons for its decisions (see Section 2). The final version of the General Procedures set out in Annex 1 to this statement has also been published on the relevant section of Ofcom's website¹¹. The General Procedures will come into force on 18 December 2013¹².

What is the impact of introducing the General Procedures?

- 1.17 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. 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.
- 1.18 We said in the Consultation that we did not consider that our proposals were likely to have a significant effect on businesses or the general public, nor did they represent a major change in Ofcom's activities. This was because the principal purpose was to formalise our existing practice, thereby providing transparency and clarity in relation to our procedures for investigating breaches of broadcast licences. We were not proposing to make significant changes to those procedures. Therefore, we were of the view that a full impact assessment was not necessary.
- 1.19 In the Consultation we also considered what (if any) impact the proposals set out in the Consultation might have on equality. We did not consider the impact of the proposals in the Consultation to be to the detriment of any group within society.
- 1.20 We did not receive any comments specifically on our view of the impact of our proposals overall. However, some comments did refer to the impact of particular aspects of our proposals on broadcasters with relatively small resources, such as community radio stations. We address these comments in Section 2.

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/general-procedures/?showResponses=true>.

¹¹ Available at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/>

¹² Except in relation to assessments and investigations already underway and to which Ofcom's current processes are already being applied at that date, where those processes will continue to apply.

Section 2

Consideration of consultation responses and Ofcom's decisions

Consultation respondents

- 2.21 The Consultation closed on 27 September 2013. Ofcom received eight responses, and no respondents requested that their responses be kept confidential.¹³ All of the responses are available on Ofcom's website.¹⁴ The respondents were:
- Absolute Radio;
 - British Sky Broadcasting Limited ("BSkyB");
 - the Community Media Association ("the CMA");
 - Global Radio;
 - Ian Nockolds ("Mr Nockolds");
 - Information TV Ltd;
 - RadioCentre; and
 - UTV Television ("UTV").
- 2.22 None of the above respondents disagreed with Ofcom's proposal to publish the General Procedures. BSkyB, UTV and RadioCentre noted that their publication will promote transparency in how Ofcom carries out its investigations in the event of potential breaches of licence conditions.
- 2.23 Ofcom has carefully considered the Consultation responses. In this section we summarise the responses that we received, grouping them together where comments relate to the same issue. We begin by considering the responses to the key changes that we proposed to our existing approach or that differed from our Standards Procedures and then proceed to consider responses to other elements of the General Procedures. We summarise the comments that we received, and we explain what decision we have reached and the reasons for that decision.
- 2.24 Some of the comments that respondents made were on matters which go beyond the scope of the Consultation. We have summarised these comments at the end of this section, and will respond to the respondents separately.

¹³ In their submissions, Global Radio and Absolute Radio noted their respective support of the entirety of RadioCentre's response.

¹⁴ Available at <http://stakeholders.ofcom.org.uk/consultations/general-procedures/?showResponses=true>.

Consultation responses and Ofcom's decisions

Publishing the General Procedures

Our proposal

2.25 In the Consultation we said that it was important that our procedures for carrying out investigations are as transparent, effective and efficient as possible, and that we were proposing to introduce General Procedures in order to formalise the procedures and ensure transparency, consistency and fairness in our decision making, and provide clarity to stakeholders¹⁵. We asked whether respondents agreed with our proposal to publish the General Procedures.

Respondents' views

2.26 None of the above respondents disagreed with Ofcom's proposal to publish the General Procedures. BSkyB, UTV and RadioCentre noted that their publication will promote transparency in how Ofcom carries out its investigations in the event of potential breaches of licence conditions.

Our decision

2.27 We will adopt and publish General Procedures.

Introduce a new initial assessment stage in cases where we receive a complaint

Our proposal

2.28 In the Consultation, Ofcom proposed to introduce a new initial assessment stage in cases where we receive a complaint (though not for our own initiative investigations), at the end of which Ofcom would decide whether to open an investigation¹⁶.

Respondents' views

2.29 Information TV, RadioCentre, the CMA and UTV all agreed with the proposal to introduce a new initial assessment stage in cases where Ofcom receives a complaint. RadioCentre described it as a "sensible step", and UTV recognised similarities with Ofcom's Standards Procedures.

Our decision

2.30 Taking into account the views put forward by respondents, Ofcom remains of the view that this proposal will help to ensure high-quality decision making and the fairness and transparency of the General Procedures. Ofcom has decided to adopt this proposal.

¹⁵ Consultation, paragraphs 2.6 to 2.8.

¹⁶ Consultation, paragraph 2.11.

Publish a list of those complaints which have been assessed but not pursued in an investigation

Our proposal

- 2.31 In the Consultation, Ofcom proposed to publish a list of complaints that have been assessed, but not pursued, in an investigation in the interests of providing increased transparency as well as consistency with the existing Standards Procedures.
- 2.32 We proposed that this list would be published as a table in Ofcom's Broadcast Bulletin, setting out the name of the broadcaster, its service, and describing in broad terms the category of relevant requirement to which the complaint relates (for example, "provision of access services")¹⁷.

Respondents' views

- 2.33 RadioCentre stated that it was "difficult to see any real benefit" in publishing a list of complaints that have been assessed, but not pursued, in an investigation. By definition, it noted, such complaints are "groundless", and in these circumstances it is only necessary to notify the complainant and the broadcaster, which should be done "promptly and privately" with the parties involved.
- 2.34 While accepting that publication contributes to transparency, the CMA noted that grievances are occasionally brought by "vexatious complainants". It argued that publication in the proposed manner could possibly lead to an "increase in vexatious complaints", leading to a "league table" of stations under assessment. It believed that this could have a negative impact both on a station's reputation and freedom of speech more widely.

Our decision

- 2.35 In light of respondents' comments, we have decided to modify the Consultation proposal to publish a list of those complaints which have been assessed but not pursued.
- 2.36 We still consider that publication of this list can be an appropriate way of achieving transparency about Ofcom's regulatory actions in this area. This is the approach that we adopted under the Standards Procedures which came into force in June 2011: Ofcom publishes in its Broadcast Bulletin a list of Standards complaints that have been assessed, but not pursued in an investigation. This list makes it clear that it consists of cases that we have not pursued because they do not raise issues that warrant investigation, i.e. there were no regulatory issues for Ofcom to pursue. We have not received any comments from broadcasters about any negative impacts of the publication of this list, and we consider that the list has had a positive impact by raising public awareness of Ofcom's work.
- 2.37 We considered that this benefit, and the lack of evidence of negative impacts since adopting this policy in the Standards Procedures, would also apply to publication of our assessments of complaints about some of the relevant requirements covered by the General Procedures. These are the requirements which are "public facing", in that they concern content broadcast to the public or the broadcaster's dealings with complainants, e.g. a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its

¹⁷ Consultation paragraph, 2.11.

access services requirements. We considered that these relevant requirements are comparable in this regard to the requirements which are covered by the Standards Procedures and it would be consistent to adopt the same approach to publishing complaints that have been assessed but not pursued in an investigation.

2.38 On reflection we have decided that there are some complaints about relevant requirements covered by the General Procedures to which we should apply a different approach. These are complaints about relevant requirements which are not “public facing”, such as those involving a broadcaster’s financial situation or its compliance with ownership restrictions. In these cases, we think that there are likely to be difficulties with us disclosing information¹⁸ in the list, such that it would be of little public benefit (if any) in terms of transparency. In addition, any possible benefit in terms of transparency may well be outweighed by the potential for publication to give rise to harmful or unfair speculation about the broadcaster in question. Taking these considerations together, and in light of the comments from respondents, we have decided that we should not normally publish complaints that have been assessed but not pursued where those complaints relate to relevant requirements that are not “public facing”. We say “normally” because we think that there may be circumstances in which, on balance, the benefits of transparency in a particular case mean that it is appropriate to publish, such as cases where there is a high level of public awareness of, and interest in, the matter complained of.

2.39 We have therefore amended paragraph A1.25 of the General Procedures (see below and Annex 1).

2.40 Paragraph A1.25 of the draft General Procedures stated:

“Based on an initial assessment of the complaint and a review of any relevant broadcast output, Ofcom will consider whether there may have been a breach of a relevant requirement. If not, Ofcom will not investigate further. Ofcom will normally notify the complainant of its decision either not to pursue the matter or to launch an investigation. Ofcom will also publish the decision in a relevant location on our website.”

2.41 In the final version of the General Procedures, we have amended this paragraph as follows (amendments indicated by the use of underlined text):

“Based on an initial assessment of the complaint and a review of any relevant broadcast output, Ofcom will consider whether there may have been a breach of a relevant requirement(s). If not, Ofcom will not investigate further. Ofcom will normally notify the complainant of its decision either not to pursue the matter or to launch an investigation. Ofcom will also normally publish the decision in a table in its Broadcast Bulletin where the matter relates to compliance with a “public facing” relevant requirement(s). “Public facing” relevant requirements relate to the content broadcast or broadcaster’s dealings with the public (including with complainants), such as a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. We will not normally publish the decision where the matter relates to compliance with a relevant requirement(s) that is not “public facing”, but there may be exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).”

¹⁸ Because of restrictions on the provision of information, including section 393 of the Communications Act 2003 and data protection legislation.

Publish a list of all cases we are investigating

Our proposal

- 2.42 In the Consultation, Ofcom proposed to publish a list of all cases that we are investigating in the interests of providing increased transparency as well as consistency with the existing Standards Procedures, and to allow third parties who may be directly affected by the outcome of Ofcom's investigation and/or who may have interests independent of the relevant broadcaster, to make representations to Ofcom which may be relevant to our investigation.
- 2.43 We proposed that this list would be published as a table in the Broadcast Bulletin, setting out the name of the broadcaster and its service¹⁹.
- 2.44 We also proposed to make it clear when publishing this information that an investigation by Ofcom does not necessarily mean that the broadcaster has done anything wrong, and that not all investigations result in breaches of the licence or other regulatory requirements being recorded.

Respondents' views

- 2.45 UTV agreed with the proposal to publish a list of all cases that we are investigating, so that the Broadcast Bulletin includes the "complete scope" of licence requirements, in order to ensure "continued transparency with stakeholders".
- 2.46 RadioCentre stated that there was "no case" for publishing details of all cases being investigated by Ofcom. Even with the caveat in paragraph 2.11 of the Consultation, namely that "an investigation by Ofcom does not necessarily mean that the broadcaster has done anything wrong", it argued that the fact that such investigations are known to be occurring will "fuel speculation" and will be "damaging" to broadcasters.
- 2.47 Information TV stated that the "Investigations List" in the Broadcast Bulletin should be complemented by a database on the Ofcom website of "Currently Open Investigations" (including each case's Ofcom reference) for all investigations, not just those involving potential breaches of licence conditions. It stated that broadcasters and Ofcom would then be able to see which investigations are ongoing, so avoiding uncertainty on the part of the broadcaster when no communication has been received from Ofcom on a complaint beyond the time period of its KPI. It believed that this would also improve transparency.

Our decision

- 2.48 We noted the RadioCentre's argument that there was "no case" for publishing details of cases being investigated by Ofcom. We disagree. If the proposed investigations list was not published, third parties would be unaware that we were investigating the potential breach(es) and would not be in a position to provide representations which may be relevant to our investigation.
- 2.49 We also noted the RadioCentre's concerns that despite the proposed caveat that the list does not necessarily mean that the broadcaster has done anything wrong, and that not all investigations result in breaches of the licence or other regulatory requirements being recorded, such a list would "fuel speculation".

¹⁹ Consultation, paragraph 2.11.

- 2.50 To address this concern, we have decided to make a change to the investigation list. We proposed in the Consultation that the list would set out the name of the broadcaster and its service. However, we have decided that in order to provide third parties with enough information about the matter we are investigating, to be able to make a decision on whether to provide representations to us and to avoid “fuelling speculation” about cases we are investigating, we will also include a brief description of the nature of the investigation e.g. “Format compliance” or “Provision of information”.
- 2.51 We also noted the concern that publishing the list – even making it clear that a broadcaster’s appearance in the list does not necessarily mean that it has done anything wrong – would be “damaging” to broadcasters.
- 2.52 We think that this raises similar issues to those discussed above in relation to publication of a list of complaints assessed but not pursued in an investigation. Similarly, we considered that the publication of a list of cases that we are investigating can be appropriate as a way of achieving transparency about Ofcom’s regulatory actions in this area. This is the approach that we adopted under the Standards Procedures which came into force in June 2011: Ofcom publishes a list in its Broadcast Bulletin of Standards cases that are being investigated. We have not received any comments from broadcasters about any negative impacts of the publication of this list, and we consider that the list has had a positive impact by raising public awareness of Ofcom’s work. As noted above, it also gives third parties who have information that may be relevant to an investigation the opportunity to comment.
- 2.53 We considered that this benefit, and the lack of evidence of negative impacts since adopting this policy in the Standards Procedures, would also apply to publication of investigations about some of the relevant requirements covered by the General Procedures. These are the requirements which are “public facing”, in that they concern content broadcast to the public or the broadcaster’s dealings with complainants, e.g. a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. We consider that these relevant requirements are comparable in this regard to the requirements which are covered by the Standards Procedures and it would be consistent to adopt the same approach to publishing cases under investigation.
- 2.54 However, on reflection we have decided that there are some investigations into relevant requirements covered by the General Procedures to which we should apply a different approach. These are investigations concerning relevant requirements which are not “public facing”, such as those involving a broadcaster’s financial situation or its compliance with ownership restrictions. In these cases, due to their nature, it is unlikely that publication of the case on the list would lead to third party representations that are relevant to our investigation; and in any event, there are likely to be difficulties with us disclosing information²⁰ in the list such that it would be of little public benefit (if any) in terms of transparency. In addition, any possible benefit in terms of transparency may well be outweighed by the potential for publication to give rise to harmful or unfair speculation about the broadcaster in question. Taking these considerations together, and in light of the comments from respondents, we have decided that we should not normally publish cases under investigation where those cases relate to relevant requirements that are not “public

²⁰ Because of restrictions on the provision of information, including section 393 of the Communications Act 2003 and data protection legislation.

facing”. We say “normally” because we think that there may be circumstances in which, on balance, the benefits of transparency in a particular case mean that it is appropriate to publish, such as cases where there is a high level of public awareness of, and interest in, the matter complained of.

2.55 We have therefore amended paragraph A1.27 of the General Procedures (see below and Annex 1).

2.56 Paragraph A1.27 of the draft General Procedures stated:

“...Ofcom will publish details of issues under investigation in a relevant location on its website.”

2.57 In the final version of the General Procedures, we have amended this paragraph as follows (amendments indicated by the use of underlined text):

“...Ofcom will normally publish details of issues under investigation in a table in its Broadcast Bulletin where the matter relates to compliance with a “public facing” relevant requirement(s) set out in broadcasters’ licences. “Public facing” relevant requirements relate to the content broadcast or broadcaster’s dealings with the public (including with complainants), such as a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. We will not normally publish details of issues under investigation where the matter relates to compliance with a relevant requirement(s) that is not “public facing”, but there may be exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).”

2.58 With regard to Information TV’s suggestion of a database on the Ofcom website of open investigations, Ofcom will notify a broadcaster when an investigation has been concluded, and the case will appear in the back pages of the Broadcast Bulletin. Ofcom considers these measures are sufficient to ensure that broadcasters know when an investigation has been closed.

Publish all decisions following investigation

Our proposal

2.59 In the Consultation, Ofcom proposed to publish all decisions following investigation²¹. For decisions that a broadcaster has breached a relevant requirement, we proposed that we would normally publish the Decision in full (subject to redaction of any confidential information).

2.60 For decisions that a broadcaster has not breached a relevant requirement, we proposed to publish information about the Decision (see paragraphs A1.33 to A1.35 of the General Procedures at Annex 1). The amount of information we publish on non-breach decisions may range from identifying the broadcaster, its service and the category into which the investigation fell, to providing more detailed information on the investigation and our reasons for the Decision.

2.61 We considered that reasons for publishing more information about a particular non-breach decision include, for example, cases where doing so would provide clarification about aspects of the regulatory regime and how we apply it that may be

²¹ Consultation, paragraph 2.11.

helpful for other broadcasters to be aware of, or if there has been a high level of public interest in the investigation.

Respondents' views

- 2.62 RadioCentre and the CMA agreed with the proposal to publish all decisions following investigation. RadioCentre noted the proposal as “entirely appropriate”.
- 2.63 Information TV noted its view that, while respecting the need for redaction of matters which should be “properly confidential”, Ofcom should be transparent in publishing in full how and why Ofcom has reached its decision, even in non-breach findings. Just as Ofcom expects broadcasters not to redact material relevant to an investigation, it stated that Ofcom should not itself judge what is “important” in arriving at its decision, and that the decision may provide “useful learning” to other broadcasters. It said that it considered this is particularly important for investigations that themselves raise “grey areas” of uncertainty which may not be adequately covered by existing rules, codes and guidance.

Our decision

- 2.64 Ofcom agreed that the publication of our reasons for not recording a breach of a relevant requirement can, in some cases, assist broadcasters in their understanding of an issue.
- 2.65 As stated in paragraph 2.61 above, Ofcom may publish more information about a particular non-breach decision where doing so would provide clarification about aspects of the regulatory regime and how Ofcom applies it that may be helpful for other broadcasters to be aware of, or if there has been a high level of public interest in the investigation. As is already the case under the Standards Procedures, in cases where Ofcom believes that the publication of a particular “not in breach” decision would be instructive or useful for the broadcasting industry or the public, Ofcom may publish such decisions in full.
- 2.66 However, in many cases covered by the General Procedures where the Decision is a matter of objective fact, such as the failure by a broadcaster to provide information to Ofcom, we do not consider that publishing a detailed “not in breach” decision would be instructive or useful for our stakeholders. As stated in paragraph 2.60 above, the amount of information we publish on non-breach decisions may range from identifying the broadcaster, its service and the category into which the investigation fell, to providing more detailed information on the investigation and our reasons for the Decision.
- 2.67 In light of respondents’ concerns about the publication of information relating to cases under the General Procedures, we considered whether, in circumstances where we have not published details that a case is under investigation (see paragraph 2.54 above), we should publish the fact that Ofcom has gone on to make a “not in breach” decision. We considered that, for the same reasons that we have decided that we will not normally publish details of investigations into relevant requirements that are not “public facing”, we should not then normally publish “not in breach” decisions at the end of these investigations.
- 2.68 We have therefore amended paragraph A1.35 of the General Procedures (see below and Annex 1) (amendments indicated by the use of underlined text).

2.69 Paragraph A1.35 of the draft General Procedures stated:

*“Ofcom will also publish information about Decisions in which it has found that the broadcaster has **not** breached a relevant requirement(s) in Ofcom’s Broadcast Bulletin and/or in the relevant broadcast licensing section of the website.”*

2.70 In the final version of the General Procedures, we have amended this paragraph as follows:

*“Ofcom will also normally publish information in its Broadcast Bulletin, about Decisions in which it has found that the broadcaster has **not** breached a “public facing” relevant requirement(s). “Public facing” relevant requirements relate to the content broadcast or broadcaster’s dealings with the public (including with complainants), such as a broadcaster failing to provide a broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. Where, in accordance with paragraph A1.27, Ofcom has not published details of an issue under investigation, Ofcom would not normally publish a “not in breach” decision at the conclusion of the investigation, but there may be exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).”*

Standardise the length of time for provision of recordings to five working days

Our proposal

- 2.71 In the Consultation, Ofcom proposed standardising the length of time for provision of recordings to five working days (paragraph A1.24 of the General Procedures at Annex 1)²². This is consistent with the Standards Procedures and the Fairness and Privacy Procedures. It is a change from existing practice for some categories of broadcasting licence, where the licensee is given ten working days to provide recordings in some cases.
- 2.72 Under the General Procedures, recordings are likely to be requested to assess complaints or Ofcom’s own initiative investigations regarding compliance with: community radio stations’ ‘Key Commitments’; commercial radio stations’ ‘Formats’; and television channels’ access services requirements (i.e. subtitles, signing and audio description) and local television channels’ ‘Programming Commitments’.

Respondents’ views

- 2.73 UTV noted that standardisation of the length of time for provision of recordings to five working days was not “a cause for concern”.
- 2.74 B SkyB noted that five working days is an “unduly restrictive timeframe” because it does not take into account the practical considerations for a broadcaster. It stated that ten working days to provide a recording is “more practicable”, without compromising transparency and fairness in the investigation process. A longer time period would not “significantly disadvantage” Ofcom in its effective and efficient decision-making, and would allow broadcasters to ensure compliance with the General Procedures where “matters beyond reasonable control” occur (such as technical failures and personnel shortage).

²² Consultation, paragraph 2.11.

- 2.75 RadioCentre noted that “a number” of radio groups have expressed concern that a time limit of five working days is “likely to be problematic”. It stated that many radio stations are small businesses with a “limited number of staff and a broad range of commitments”. RadioCentre said that Ofcom should confirm that there will be flexibility on this timeframe depending on individual circumstances, and the volume and nature of the request, and ideally the timeframe should be kept to ten working days in these cases.
- 2.76 Similarly, the CMA stated that, while standardising the length of time for the provision of recordings is “reasonable”, it should be considered that community broadcasters may not always have the “administrative and technical capacity” to respond quickly. It considered that the minimum time to respond should take into account the staffing capacity and the ability of each particular station to react.

Our decision

- 2.77 While taking into account the comments made by BSkyB and the RadioCentre, Ofcom noted that all broadcasters are already currently required to provide recordings to it within five working days in the case of Standards and Fairness and Privacy complaints.
- 2.78 The prompt assessment of complaints is in the interests of the complainant, viewers and listeners more generally, as well as the relevant broadcaster. An allowance of ten working days for broadcasters to provide recordings would reduce the speed at which Ofcom could assess complaints and launch investigations where necessary.
- 2.79 All licences issued to broadcasters by Ofcom contain a condition that requires licensees to ensure adequate staffing for compliance purposes.
- 2.80 However, Ofcom recognises that matters beyond a broadcaster’s reasonable control may mean that the broadcaster cannot provide recordings within five working days, and that small broadcasters, in particular those in the community radio sector who are often staffed by volunteers, are likely to have fewer resources for compliance purposes than larger stations. As necessary, we will take this – and the amount of content requested – into account when requesting recordings, being flexible where possible and appropriate. The following wording set out in the General Procedures permits this flexibility:
- recordings “must normally be provided within five working days” (paragraph A1.24 of the General Procedures at Annex 1);
 - “...broadcasters should keep to the time limits specified in these General Procedures. Any complainant or broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate” (see paragraph A1.37 of the General Procedures at Annex 1); and
 - “Ofcom may consider it appropriate (in the interests of fairness and/or to properly carry out an investigation) to amend or adapt the time limits set out in these General Procedures in a particular case” (see paragraph A1.38 of the General Procedures at Annex 1).
- 2.81 It is important to note that Ofcom would only require the provision of recordings of content by a broadcaster in a small number of cases as detailed in paragraph 2.72 above. Further, Ofcom will make its recording requests as specific as possible to avoid broadcasters having to provide excessive amounts of content.

2.82 Taking into account the views put forward by respondents, Ofcom remains of the view that this proposal will help to ensure efficient decision making and ensure consistency with the existing Standards Procedures and Fairness and Privacy Procedures. Ofcom has therefore decided to adopt this proposal.

Introduce KPIs for both the assessment of complaints and the completion of investigations

Our proposal

2.83 In the Consultation, Ofcom proposed introducing KPIs for both the assessment of complaints (15 working days) and the completion of investigations (50 working days)²³. These would mirror the KPIs in our Standards Procedures.

Respondents' views

2.84 RadioCentre, UTV and the CMA all welcomed the introduction of KPIs to assess complaints and complete investigations, mirroring the KPIs in Ofcom's Standards Procedures.

Our decision

2.85 Taking into account the views put forward by respondents, Ofcom has decided to adopt this proposal.

Other issues raised by respondents on the General Procedures

Directing complainants to broadcasters

Our proposal

2.86 The proposed General Procedures stated that those making a complaint about access services (subtitling, sign language and audio description) can, if they wish, seek to resolve their complaint directly with the broadcaster before making a complaint to Ofcom. We said that we understand that this has previously produced speedy and effective resolution of complaints and that receiving complaints and feedback from consumers assists broadcasters in improving the quality of the access services they provide. The proposed General Procedures were silent on whether complainants should direct complaints about other issues to the broadcaster in the first instance.

Respondent's view

2.87 In relation to complaints to Ofcom under the existing Standards Procedures, as well as the General Procedures, Information TV stated that it should be a "formal requirement" that viewers who wish to complain about a programme or channel should first make their complaint to the broadcaster directly, before approaching Ofcom. A complaint to Ofcom should only be made in the event that the viewer does not receive, or is not satisfied with, a broadcaster's response. Noting that this is a practice followed by other regulators, Information TV argued that this would obviate unnecessary cost and effort on the part of broadcasters and Ofcom alike.

²³ Consultation, paragraph 2.11.

Our decision

- 2.88 We do not intend to formally require complainants to contact the relevant broadcaster before contacting us. Ofcom has a statutory duty to ensure that the relevant standards and requirements are met. Ofcom also recognises that complainants may not wish to contact the broadcaster directly about their complaint and considers that they should nonetheless be able to complain directly to Ofcom.
- 2.89 It is open to broadcasters to encourage viewers and listeners to contact them with their concerns, but as set out in paragraph A1.18 of the General Procedures at Annex 1 we do not consider that there should be a requirement for viewers and listeners to contact the broadcaster before submitting a complaint to Ofcom. However, it should be noted that in many cases covered by these General Procedures for example, failure to pay licence fees or to provide information to Ofcom, viewers and listeners would be unaware that a potential breach of a relevant requirement had occurred.

Seeking broadcasters' representations

Our proposal

- 2.90 Ofcom proposed that when investigating possible breaches, there may be specific cases where Ofcom does not consider it necessary to seek representations from the broadcaster before reaching a Preliminary View. This will normally be where the question of whether a breach has occurred is a matter of objective fact (for example, whether a broadcaster has paid licence fees). There may also be other specific cases where this approach is appropriate. In these cases, Ofcom will not usually seek the broadcaster's representations at this stage of the investigation. Instead Ofcom will write to the broadcaster with its Preliminary View on the substance of the complaints (paragraph A1.28 of the General Procedures at Annex 1). The broadcaster would then have an opportunity to make representations on Ofcom's Preliminary View.

Respondent's view

- 2.91 BSkyB noted its concern that the "default position" under the proposed General Procedures appeared to be that Ofcom will not ask broadcasters for information relating to a potential breach unless it considers it necessary. It noted that this is a departure from the Standards Procedures – where Ofcom will ask for information unless considered unnecessary. BSkyB was concerned that the effect of this means that Ofcom is able to reach a Preliminary View without taking into consideration any representations from a broadcaster, which it considered is not a fair or transparent process. It suggested that Ofcom should invite comments from a broadcaster unless Ofcom is of the view that such comments would not assist with making a decision.

Our decision

- 2.92 Ofcom intended that the provisions in the General Procedures in this regard should have the same substantive effect as the equivalent provisions in the Standards Procedures. To clarify that this was our intention, we have amended the General Procedures so that they follow more closely the relevant wording in the Standards Procedures.

- 2.93 Paragraph A1.24 of the draft General Procedures regarding the assessment of cases stated:

“If Ofcom considers that it should assess the matter further and it relates to the output of a broadcast service, it may ask the broadcaster for recordings of the relevant output/programme(s) at this stage, which must normally be provided within five working days. At this stage it is not appropriate for the broadcaster to provide written representations.”

- 2.94 In the final version of the General Procedures, we have amended this paragraph as follows (amendments indicated by the use of underlined text):

“If Ofcom considers that it should assess the matter further, it may at this stage ask the broadcaster for information to assist our consideration of the matter(s), and/or – in cases relating to the output of a broadcast service – recordings of the relevant output/programme(s), which must normally be provided within five working days. At this stage it is not appropriate for the broadcaster to provide written representations.”

- 2.95 Paragraph A1.27 of the draft General Procedures regarding the investigation of cases stated:

“Other than in cases falling within paragraph A1.28 below, where Ofcom considers that it is necessary to obtain further information to ensure that it can fairly and properly prepare its Preliminary View, Ofcom may seek such information before preparing that view. Where Ofcom requires additional information from the broadcaster, Ofcom will write to the broadcaster and summarise the material parts of the complaint(s) or matter concerned, set out the particular relevant requirement(s) and invite the broadcaster to make representations in response (and to provide any relevant material/evidence in support) within 10 working days...”

- 2.96 In the final version of the General Procedures, we have amended this paragraph as follows (amendments indicated by the use of underlined text):

“Other than in cases falling within paragraph A1.28 below, where Ofcom considers that a broadcaster may have failed to comply with a particular relevant requirement, Ofcom will write to the relevant broadcaster. Ofcom will summarise the material parts of the complaint(s) or matter(s) concerned, set out the particular relevant requirement(s) which it considers are relevant and applicable to the complaint(s) or matter concerned, and invite the broadcaster to make representations in response (and to provide any relevant material/evidence in support) within 10 working days...”

- 2.97 We have also made a minor change to paragraph A1.28 of the General Procedures as follows:

- 2.98 Paragraph A1.28 of the draft General Procedures regarding the investigation of cases stated:

“...There may also be other specific cases where the matter(s) in issue, on the facts, mean this approach is appropriate. In these cases, Ofcom will not usually seek the broadcaster’s representations at this stage. Instead, Ofcom will write to the broadcaster with its Preliminary View on the substance of the complaint(s).”

- 2.99 In the final version of the General Procedures, we have amended this paragraph as follows (amendments indicated by the use of underlined text):

“... There may also be other specific cases where the matter(s) in issue, on the facts, mean this approach is appropriate. In these cases, Ofcom will not usually seek the broadcaster’s representations at this stage. Instead, Ofcom will write to the broadcaster with its Preliminary View on the substance of the matter(s).”

Providing more information about complaints to broadcasters

Our proposal

- 2.100 The proposed General Procedures stated that when investigating possible breaches, Ofcom may request information from the relevant broadcaster before reaching a Preliminary View on the matter. Where Ofcom requires additional information it will write to the broadcaster summarising the material parts of the complaint(s) or matter(s) concerned, setting out the relevant requirement(s) and invite the broadcaster to make representations in response²⁴.

Respondents’ views

- 2.101 B SkyB stated that, in order for a broadcaster to provide relevant and effective comments to Ofcom, Ofcom should provide a broadcaster with more information about the nature of the complaint. This would enable a broadcaster to provide Ofcom with a relevant recording, rather than an entire programme, and to provide Ofcom with comments that might enable it to close the complaint before expending time and resources on “an inevitable non-breach finding”.
- 2.102 Mr Nockolds suggested that it would be helpful to provide broadcasters with full details of complaints including complainants’ details. Mr Nockolds considered that this would limit the number of “vexatious” complainants.

Our decision

- 2.103 As stated in paragraphs 2.92 to 2.96 above, we have amended the General Procedures to clarify:
- i) That during the assessment stage we may ask the broadcaster for information to assist our consideration of the matter; and
 - ii) That where we consider that a broadcaster may have failed to comply with a particular relevant requirement we will launch an investigation. During an investigation we will write to the relevant broadcaster summarising the material parts of the complaint(s) or matter concerned, set out the particular relevant requirement(s) which we consider are relevant and applicable to the complaint(s) or matter concerned, and invite the broadcaster to make representations in response.
- 2.104 The implementation of our revised Standards Procedures in June 2011, included the introduction of an “issues-based” model for ensuring compliance with relevant requirements. This means that rather than pursuing individual complaints, we investigate, where necessary, issues which complainants have brought to our attention. As set out in the Consultation, we intend to implement the same “issues-

²⁴ Consultation, paragraph A1.27.

based” model in the General Procedures. Therefore, during the initial assessment stage, we will first consider whether, on its face, a complaint raises potentially substantive issues in relation to a relevant requirement (paragraph A1.23 of the General Procedures at Annex 1). As some complaints may raise more than one issue, only one of which Ofcom considers warrants investigation, we consider that it would be more helpful to provide the broadcaster with details relevant to the issue we are investigating rather than the extraneous information provided in the complaint which may cause confusion. Broadcasters will be able to contact Ofcom to ask for clarification on such information if required.

- 2.105 Further, Ofcom will only request a recording of an entire programme if it considers that it requires the content in order to assess a complaint or issue.
- 2.106 With regards to providing complainants’ details to broadcasters, as stated in paragraph A1.22 of the General Procedures, unless a complainant specifically requests that his/her name and contact details should remain confidential, we reserve the right to disclose these to the broadcaster. However, we do not intend to disclose the details as a matter of course. If a broadcaster considers it helpful to have a complainant’s details, it should submit a written request to Ofcom which we will consider²⁵.
- 2.107 With regard to “vexatious complainants”, as is already the case under our existing Standards Procedures, we will consider each and every complaint we receive to determine whether it raises an issue(s) warranting further assessment (i.e. requesting a recording from the broadcaster or information to assist our assessment of the issue) and/or investigation (i.e. seeking the broadcaster’s representations on how it has complied with a relevant requirement). We will not contact the broadcaster about those complaints that on their face, raise no issues for us to pursue.
- 2.108 Taking into account the views put forward by respondents, Ofcom remains of the view that this proposal will help to ensure efficient decision making and ensure consistency with the existing Standards Procedures. Ofcom has therefore decided to adopt this proposal.

Complaints that do not lead to an investigation

Respondent’s view

- 2.109 Information TV stated that, where there has been a dialogue between Ofcom and a broadcaster on a specific complaint, typically where a recording of broadcast content has been requested, Ofcom should “formally inform” the broadcaster when it decides that no investigation is being pursued. It said that, in this instance, the broadcaster has already incurred costs in providing the recording of broadcast content, and may feel it necessary to begin a detailed consideration of the situation, ahead of potentially being informed by Ofcom that a complaint is to be investigated (which will require a subsequent response within the “relatively tight timeframes” of Ofcom’s KPIs). This would “eliminate unnecessary costs” to the broadcaster, and allow resources to be focused on those investigations being pursued.

²⁵ Ofcom is a “prescribed person” under the Public Interest Disclosure Act 1998 and has published guidance at <http://www.ofcom.org.uk/about/policies-and-guidelines/procedure-for-making-a-disclosure-to-ofcom-under-the-public-interest-disclosure-act-pida/> on how to make a disclosure to Ofcom under the provisions of this Act.

Our decision

2.110 When we assess a complaint, we may or may not need to write to the broadcaster to obtain recordings or information to assist our assessment of the matter(s). If we decide not to pursue a complaint we will not write to the relevant broadcaster but our decision will be included in the Broadcast Bulletin. In circumstances where we have requested information from the broadcaster to assist our assessment of the matter(s), we will inform them directly of the outcome of our initial assessment and our decision not to pursue a complaint will also be published in the Broadcast Bulletin (unless it is regarding a non “public facing” matter. See paragraphs 2.67 to 2.70 above).

Impact of assessments and investigations on Community Radio stations’ resources

Respondent’s view

2.111 Mr Nockolds raised concern that since January 2010 Ofcom has received 147 complaints about content broadcast on Community Radio stations of which 89 Ofcom considered did not warrant investigation. Mr Nockolds stated that the classification of a complaint as “not investigated” in the Broadcast Bulletin is a “misnomer” because for a complaint to be classified as such it requires Ofcom to request a recording of content from the relevant broadcaster who will have to identify and make available the content in question.

2.112 In addition, Mr Nockolds stated that processing “baseless complaints” and/or “vexatious complaints” is a waste of Ofcom’s resources. He also said that, given that Community Radio stations are often staffed by volunteers, he believed it is also a “waste of effort” for stations as well as being damaging to a station’s confidence and morale.

2.113 Mr Nockolds suggested that in the interests of proportionality Ofcom should consider adopting a different approach to regulating Community Radio stations, although he noted that this approach could benefit all broadcasters. Mr Nockolds suggested that Ofcom should: adopt an informal complaint resolution process; provide the broadcaster the full details of complaints including complainants’ details; and “disregard obsessive, persistent, harassing, prolific, repetitious complainants”.

Our response

2.114 Ofcom noted Mr Nockolds’ position that the request by Ofcom of a recording requires the relevant broadcaster to identify and make available the content in question. In Ofcom’s view, this simply reflects an obligation set out in all broadcasters’ licences irrespective of their size. The conditions set out in broadcasters’ licences (which include providing recordings of broadcast content on request) are there to protect the interests of viewers and listeners. See also paragraph 2.80 above regarding the flexibility that the General Procedures afford to broadcasters in relation to the provision of recordings.

2.115 We consider that the General Procedures are a proportionate way of investigating potential breaches of relevant requirements. As stated above, under the General Procedures, as already occurs under the existing Standards Procedures, we consider each and every complaint we receive to assess whether a complaint, on its face, raises potentially substantive issues in relation to a relevant requirement which warrants investigation by Ofcom (paragraph A1.23 of the General Procedures at Annex 1). If Ofcom judges that a complaint is “baseless” in that it does not raise

potential issues under the relevant regulatory requirements, we will not pursue the complaint and will not request a recording of content or other information from the broadcaster.

- 2.116 If, based on the initial assessment of the complaint and any relevant recording, we consider there may have been a breach of a relevant requirement, we will launch an investigation as set out in paragraphs A1.27 to A.132 of the General Procedures at Annex 1.
- 2.117 With regards to the suggestion of an informal complaint resolution process, we consider that this would not be an effective substitute for the formal investigation process set out in the General Procedures and would not meet the statutory requirements that Ofcom must meet in this area (see paragraphs 1.2 and 1.3 above).
- 2.118 As stated in paragraph 2.89 above, it is open to broadcasters to encourage viewers and listeners to contact them with their concerns, but as set out in paragraph A1.18 of the General Procedures at Annex 1, we do not consider that there should be a requirement for viewers and listeners to contact the broadcaster before submitting a complaint to Ofcom. However, it should be noted that in many cases covered by these General Procedures for example, failure to pay licence fees or to provide information to Ofcom, viewers and listeners would be unaware that a potential breach of a relevant requirement had occurred.
- 2.119 With regards to the concern about “vexatious complainants” please see paragraph 2.107 above.

Clear explanation of process

Respondent's view

- 2.120 RadioCentre noted in its response that a number of its members would like Ofcom to provide a “simple and clear” summary explanation of its processes for handling complaints and potential licence breaches under each of the compliance codes.
- 2.121 Indicative topic areas for such a summary explanation included guidance on timings, the committees or Executive teams handling a particular issue (and how they can be contacted, information on opportunities for broadcasters to provide further evidence, and details of any appeals processes).
- 2.122 RadioCentre also noted that, where broadcasters in the Nations are affected, Ofcom should seek input from its Advisory Committees “as a matter of course”.

Our response

- 2.123 We consider that the General Procedures are clear, as are the other procedures referred to at paragraph 1.4 above. We are willing to speak to any broadcaster who would find it helpful to discuss any aspect of any of these procedures.
- 2.124 With regards to Ofcom seeking input from its Advisory Committees in England, Wales, Scotland and Northern Ireland “as a matter of course”, we consider it to be disproportionate to consult our Advisory Committees in every case and this would also result in complaints taking longer to investigate. However, as occurs under the existing Standards Procedures, we do, where we consider it necessary, seek input from our members of the Executive in the nations and the Advisory Committees

where appropriate. Further, representatives of the nations are invited to the Broadcasting Licensing Committee if their input is required.

Issues raised by respondents which are outside the scope of the Consultation

2.125 The following points raised by respondents to the Consultation do not fall within the scope of the Consultation and we will respond to the respondents separately.

Options for regulatory action

Respondent's view

- 2.126 The CMA 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. In the event of sanctions, “where justified for non-compliance”, these should in the first instance aim at “reforming behaviour”, and so consist of a “warning or requirement” to broadcast a message recognising the breach.
- 2.127 The CMA argued that “more serious” measures, such as fines or suspensions, should be applied “only after repeated and serious breaches”, where warnings and milder sanctions have failed to address the problem.
- 2.128 The CMA noted that Ofcom’s practice and procedure in this area is “broadly consistent” with international standards, but that closer attention should be paid to “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.

Our response

- 2.129 Ofcom has published Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)²⁶. Those procedures are outside the scope of this consultation, but we note that in cases where Ofcom decides to impose a financial penalty, the Sanctions Procedures require us to consider the level of penalty in accordance with our published Penalty Guidelines²⁷. These require us to consider a range of factors including the extent to which the level of penalty is proportionate, taking into account the size and turnover of the broadcaster.

Blurring regulatory boundaries

- 2.130 Information TV noted that, increasingly, broadcasters – in their compliance activities – are required to take account of, and comply with, the rules of a “growing range” of regulators, some of whom are accountable directly to Ofcom. It stated that there is a “growing range” of situations in which inconsistencies arise in attempting to reconcile the requirements of different regulators. Information TV noted that this is exacerbated by the blurring of what are purely “broadcast” issues in the age of the internet.

²⁶ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures--sanctions/>

²⁷ <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

2.131 Information TV noted the “urgent need” for an industry-wide consultation aimed at “clarifying, prioritising and as far as possible reconciling” regulatory authority in broadcasting.

2.132 Information TV noted that the Broadcast Bulletins could be improved by including the Ofcom reference number assigned to each complaint. It stated that it is often difficult for broadcasters to find, or correlate, a complaint in the listings with one upon which there may already have been a dialogue between Ofcom and the broadcaster.

Encouraging compliance

2.133 The CMA stated that, where the General Procedures focus on investigation and potential sanction, “more attention” could be paid to “positive approaches” to encourage compliance by community broadcasters, which could also be “more cost-effective”.

2.134 It suggested:

- Regular workshops between Ofcom and the CMA to share best practice and to which community radio stations, and other broadcasters, could be invited;
- Ofcom and the CMA encouraging community broadcasters to develop internal ethical codes of conduct, to build “a culture of compliance” and to promote “better self-regulation”; and
- 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.

Annex 1

General procedures for investigating breaches of broadcast licences

Introduction

- A1.1 This document outlines Ofcom’s General procedures for investigating possible breaches by broadcasters¹ (“the General Procedures”) which are not covered by any of the specific procedures set out below in paragraph A1.11.
- A1.2 The General Procedures set out in this document are those Ofcom will usually follow in order to investigate whether a breach of a “relevant requirement” (as set out at paragraph A1.13 below) has occurred, before any action may be taken under the Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)².
- A1.3 Ofcom may launch investigations on its own initiative as well as investigate complaints made by others. The General Procedures in a complaint-led investigation and an Ofcom-initiated investigation are the same.
- A1.4 The General Procedures set out in this document are effective from 18 December 2013. They, and any related guidance, may be reviewed and amended at any time. Any major revision will be the subject of prior consultation.
- A1.5 If Ofcom considers that it is necessary to depart from these General Procedures in any material respect in a particular case for reasons of fairness and/or in order for Ofcom properly to consider a complaint(s) or carry out an investigation, it will write to the broadcaster concerned (and any other relevant parties) in advance, setting out the nature/extent of its departure, its reasons for doing so and seeking the relevant parties’ response.

Statutory framework

- A1.6 The main statutes governing broadcasting are the Broadcasting Act 1990 (“the 1990 Act”), the Broadcasting Act 1996 (“the 1996 Act”) and the Communications Act 2003 (“the 2003 Act”). These statutes impose general duties on Ofcom in relation to broadcasting, and include the duty to secure the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c) of the 2003 Act).
- A1.7 Ofcom also has more specific duties in relation to, for example³:

¹ References to “broadcasters” in these General Procedures are to any radio or television broadcaster licensed and/or regulated by Ofcom.

² <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>.

³ This is not an exhaustive list of Ofcom’s specific duties that give rise to relevant requirements to which these General Procedures apply.

- the requirement for certain types of radio station to deliver specific types of music or speech content (sections 106 of the 1990 Act and 314 of the 2003 Act);
- the requirements relating to independent, original and regional programming on public service television services (Chapter 4 of Part 3 of the 2003 Act);
- the requirements in television licences relating to European production and European independent production (section 335 of the 2003 Act);
- the provision of subtitling, signing and audio description on relevant television services (sections 303 to 307 of the 2003 Act); and
- applying rules restricting those who may hold broadcasting licences (sections 5 and 88 of the 1990 Act and sections 5 and 44 of the 1996 Act).

A1.8 Ofcom carries out its duties by granting licences to certain radio and television broadcasters and including in those licences conditions it thinks are appropriate to help it carry out its duties⁴. These conditions include requirements upon licensees to offer specific programmes and types of content, to provide information to Ofcom to enable us to perform our regulatory functions⁵ and to pay fees and to comply with various codes issued by Ofcom. Examples of relevant codes are listed in paragraph A1.13.

BBC and the Welsh Authority

A1.9 The BBC and the Welsh Authority (which operates its television service under the name S4C) do not require licences from Ofcom but are nonetheless subject to certain requirements⁶.

A1.10 Relevant requirements that the BBC and the Welsh Authority are subject to include those under the Code on Television Access Services⁷, requirements on independent programme quotas⁸ and retaining and producing recordings when required by Ofcom to do so⁹.

⁴ See sections 3 and 4 of the 1990 Act and sections 3 and 4 of the 1996 Act (for television services) and sections 85 to 87 of the 1990 Act and sections 42 and 43 of the 1996 Act (for radio services).

⁵ For example, information about changes in those controlling broadcasters, annual reports from community radio stations and annual relevant turnover data from specified radio and television licensees.

⁶ Relevant provisions governing the BBC are the Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, dated 28 June 2006 ("the BBC Agreement"), sections 198 and 338 of, and Schedule 12 to, the 2003 Act and provisions such as those in Part IV of the 1996 Act. Relevant provisions governing the Welsh Authority are sections 203 and 338 of, and Schedule 12 to, the 2003 Act, as well as provisions such as those in Part IV of the 1996 Act.

⁷ Applicable to the BBC under section 198 of the 2003 Act and clauses 59 and 95 of the BBC Agreement, and to the Welsh Authority under sections 203 and 338 of, and Schedule 12 to, the 2003 Act.

⁸ Applicable to the BBC under section 338 of, and paragraph 1 of Part 1 of Schedule 12 to, the 2003 Act and clauses 52 and 95 of the BBC Agreement, and to the Welsh Authority under sections 203 and 338 of, and paragraph 7 of Part 2 of Schedule 12 to, the 2003 Act.

⁹ Applicable to the BBC under section 198 of the 2003 Act and clauses 62 and 95 of the BBC Agreement, and to the Welsh Authority under sections 203 and 338 of, and paragraph 20 of Schedule 12 to, the 2003 Act.

When do these General Procedures apply?

A1.11 Ofcom has produced specific procedures which apply to investigations of potential breaches of certain categories of regulatory requirement. These specific procedures are listed in the table below. A breach of the types shown in the table below would generally be investigated under the corresponding specific procedure and would not be covered by these General Procedures.

Category of regulatory requirement	Specific procedure
Content standards objectives set out under section 319 of the 2003 Act and applied in the Ofcom Broadcasting Code and other codes ¹⁰ .	Procedures for investigating breaches of content standards for television and radio ¹¹ .
Fairness and/or privacy requirements set out under Part 5 of the 1996 Act and applied in the Ofcom Broadcasting Code.	Procedures for the consideration and adjudication of Fairness & Privacy complaints ¹² .
Licence conditions and relevant codes to ensure fair and effective competition in the provision of broadcast services ¹³ .	Enforcement Guidelines, Ofcom's guidelines for the handling of competition complaints and complaints concerning regulatory rules ¹⁴ .

A1.12 These General Procedures apply to investigations of breaches of all other categories of regulatory requirement which are not included in the list above. These requirements are referred to in this document as "relevant requirements".

A1.13 The relevant requirements include, for example, requirements placed upon broadcasters to:

- broadcast certain types of content (e.g. radio formats and delivery of news and regional programming quotas);

¹⁰ "Other codes" includes the Cross-Promotion Code, the Code on the Prevention of Undue Discrimination between Advertisers and the Code on the Scheduling of Television Advertising. These codes and the Broadcasting Code can be found on Ofcom's website at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/?a=0>. It also includes the UK Code of Broadcast Advertising, which can be found at <http://www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>.

¹¹ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

¹² <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

¹³ The Code on Electronic Programme Guides ("EPG") sets out practices to be followed by EPG providers to (i) give appropriate prominence for public service channels, (ii) provide features and information needed to enable EPGs to be used by people with disabilities affecting their sight or hearing or both and (iii) secure fair and effective competition (<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>). Generally, Ofcom will apply the Enforcement Guidelines for breaches of (iii), and these General Procedures for breaches of (i) and (ii).

¹⁴ http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf, paragraphs 2.22 to 2.24.

- comply with television licence obligations to fulfil certain production and programming quotas set out in accordance with UK and European legislation;
- provide Ofcom with information it has requested;
- pay fees; and
- comply with various codes, such as:
 - the Code of Television Access Services (i.e. subtitling, sign language and audio description)¹⁵;
 - the Code on Sports and Other Listed and Designated Events¹⁶;
 - the Code on Electronic Programme Guides (in respect of issues relating to prominence of public service channels and access services)¹⁷; and
 - technical codes for television¹⁸ and radio¹⁹.

General Procedures

Making a complaint

A1.14 Complaints under these General Procedures can be made to Ofcom by any person or body who considers that a broadcaster has failed to comply with a relevant requirement.

Complaints relating to broadcast content

A1.15 Complaints relating to broadcast content which fall under these General Procedures should be made as soon as possible after the relevant broadcast or occurrence due to the time limits for broadcasters retaining recordings of their output²⁰.

A1.16 Complaints considered under these General Procedures are dealt with by Ofcom according to the type of broadcasting service. Please send your complaint to the appropriate email address:

- Complaints about a television channel: tv.licensing@ofcom.org.uk.

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2013.pdf>.

¹⁶ http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf.

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>. See also footnote 13 above.

¹⁸ For example, the Television Technical Performance Code (http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/tv_tech_platform_code.pdf).

¹⁹ For example, the Site Engineering Code for Analogue Radio Broadcast Transmission Systems (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/code2013.pdf>), the Digital Technical Code (http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/digi_tech_code.pdf) and the Technical policy guidance for DAB multiplex licensees (http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/policy_guidance.pdf).

²⁰ Recordings of radio programmes must be kept by broadcasters for 42 days after the broadcast. Recordings of television programmes must be kept by cable and satellite broadcasters for 60 days, and by BBC1, BBC2, ITV, STV, UTV, Channel 4, Channel 5, S4C and digital terrestrial television channels for 90 days.

- Complaints about a community radio station: community.radio@ofcom.org.uk.
- Complaints about a commercial radio station: commercial.radio@ofcom.org.uk.
- Complaints about a temporary radio station (also known as a Restricted Service Licence or RSL): rslenquiries@ofcom.org.uk.

A1.17 Alternatively, you can contact us at: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone 0300 123 3333 or 020 7981 3040.

Complaints relating to access services (subtitling, sign language and audio description)

A1.18 In the case of complaints about the provision of subtitling, sign language and audio description, complainants can, if they wish, seek to resolve the matter directly with the broadcaster before making a complaint to Ofcom²¹. We understand that this has previously produced speedy and effective resolution of complaints and that receiving complaints and feedback from consumers assists broadcasters in improving the quality of the access services they provide. If you are not satisfied with the response you receive from the broadcaster then please complete our [complaint form](#)²².

A1.19 People with sensory impairments who find it easier to do so may call our text phone on 020 7981 3043 (please note that this number only works with special equipment used by people who are deaf or hard of hearing). People with visual impairments wishing to complain about audio description may wish to use our dedicated email address: adcomplaints@ofcom.org.uk.

A1.20 Alternatively, you can contact us at: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or telephone 0300 123 3333 or 020 7981 3040.

Information to be included in a complaint

A1.21 All complaints should include sufficient detail about the matter complained of to enable Ofcom to investigate fully. All complaints should, therefore, include details about what is alleged to have been done, or not done, by which broadcaster, when, where and how. A failure to provide these details may mean that Ofcom is not able to investigate the complaint. The complainant's full contact details (including email address where appropriate) should also be included.

A1.22 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 broadcaster²³.

²¹ The contact details of the major television broadcasters can be found on Ofcom's website at <http://consumers.ofcom.org.uk/tell-us/tv-and-radio/subtitling-signing-or-audio-description/>. The contact details of all television broadcasters can be found on Ofcom's website at <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/>.

²² <https://stakeholders.ofcom.org.uk/tell-us/subs-signs-audio>.

²³ Ofcom is a "prescribed person" under the Public Interest Disclosure Act 1998 and has published guidance at <http://www.ofcom.org.uk/about/policies-and-guidelines/procedure-for-making-a-disclosure-to-ofcom-under-the-public-interest-disclosure-act-pida/> on how to make a disclosure to Ofcom under the provisions of this Act.

Initial assessment of complaints

- A1.23 On receipt of a complaint, Ofcom will first consider whether, on its face, there are potentially substantive issues in relation to a relevant requirement which warrant investigation by Ofcom.
- A1.24 If Ofcom considers that it should assess the matter further, it may at this stage ask the broadcaster for information to assist our consideration of the matter(s), and/or – in cases relating to the output of a broadcast service – recordings of the relevant output/programme(s), which must normally be provided within five working days²⁴. At this stage it is not appropriate for the broadcaster to provide written representations.
- A1.25 Based on an initial assessment of the complaint and a review of any relevant broadcast output, Ofcom will consider whether there may have been a breach of a relevant requirement(s). If not, Ofcom will not investigate further. Ofcom will normally notify the complainant of its decision either not to pursue the matter or to launch an investigation. Ofcom will also normally publish the decision in a table in its Broadcast Bulletin where the matter relates to compliance with a “public facing” relevant requirement(s). “Public facing” relevant requirements relate to the content broadcast or broadcaster’s dealings with the public (including with complainants), such as a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. We will not normally publish the decision where the matter relates to compliance with a relevant requirement(s) that is not “public facing”, but there may be exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).
- A1.26 Ofcom aims to complete an initial assessment of all complaints usually within 15 working days.

Investigating possible breaches and preparation of Ofcom’s Preliminary View

- A1.27 Other than in cases falling within paragraph A1.28 below, where Ofcom considers that a broadcaster may have failed to comply with a particular relevant requirement, Ofcom will write to the relevant broadcaster. Ofcom will summarise the material parts of the complaint(s) or matter(s) concerned, set out the particular relevant requirement(s) which it considers are relevant and applicable to the complaint(s) or matter concerned, and invite the broadcaster to make representations in response (and to provide any relevant material/evidence in support) within 10 working days. Ofcom will normally publish details of issues under investigation in a table in its Broadcast Bulletin where the matter relates to compliance with a “public facing” relevant requirement(s) set out in broadcasters’ licences. “Public facing” relevant requirements relate to the content broadcast or broadcaster’s dealings with the public (including with complainants), such as a broadcaster failing to provide its broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. We will not normally publish details of issues under investigation where the matter relates to compliance with a relevant requirement(s) that is not “public facing”, but there may be exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).

²⁴ It is a condition of all broadcast licences that a licensee must make and then retain a recording of all its programmes for a fixed period of days from broadcast, and at Ofcom’s request must produce recordings “forthwith”.

- A1.28 There may be specific cases where the matter(s) in issue, on the facts, mean that Ofcom does not consider it necessary to seek representations from the broadcaster at this stage. This will normally be where the question of whether there is a breach of a relevant requirement is a matter of objective fact (for example, relating to whether a broadcaster has paid licence fees). There may also be other specific cases where the matter(s) in issue, on the facts, mean this approach is appropriate. In these cases, Ofcom will not usually seek the broadcaster's representations at this stage. Instead, Ofcom will write to the broadcaster with its Preliminary View on the substance of the matter(s).

Representations from third parties

Ofcom recognises that there may be persons/bodies who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster. Wherever possible, broadcasters should seek to take account of and include the representations of such persons/bodies in their submissions in response to a complaint and confirm to Ofcom that they have done so.

However, such persons/bodies may make representations on their own behalf direct to Ofcom in respect of a complaint which Ofcom proceeds to investigate. In such a case, persons/bodies should seek to make representations to Ofcom as early in an investigation of a complaint as possible, setting out if/to what extent their representations differ from those of the broadcaster. Ofcom will as appropriate take those representations into account and include those persons/bodies in its decision-making process under these General Procedures.

- A1.29 On receipt of the broadcaster's representations (where sought), Ofcom will prepare its Preliminary View on the substance of the possible breach of the relevant requirement(s). This Preliminary View is only provisional and may be subject to change in the light of subsequent representations/material provided by the broadcaster (and any relevant third party). Where a Preliminary View raises an issue that is highly sensitive or has a significant public or media impact, it will be provided to members of Ofcom's Broadcast Licensing Committee²⁵ or the Content Board²⁶, or both, depending on the circumstances of the case, before it is provided to the broadcaster. The Preliminary View will contain:

- a summary of the matter and, if relevant, any complaint(s);
- a summary, if relevant, of the material parts of any broadcast output to which the matter and/or any complaint(s) relates;
- the particular relevant requirements which Ofcom considers are applicable to the matter/complaint(s); and
- Ofcom's preliminary view of whether any breaches of those requirements have occurred and the reasons for that assessment.

²⁵ <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/broadcast-licensing-committee/>.

²⁶ <http://www.ofcom.org.uk/about/how-ofcom-is-run/content-board/>.

- A1.30 When Ofcom has prepared its Preliminary View, Ofcom will provide it to the broadcaster (and any relevant third party) and request representations usually within 10 working days.
- A1.31 Once Ofcom has received and considered the broadcaster's representations on its Preliminary View (if any) and/or any representations from a relevant third party, it will reach its final decision (i.e. whether or not to record a breach of a licence or other relevant requirements) ("the Decision") and inform the broadcaster.
- A1.32 Ofcom aims to complete those cases that it takes forward for investigation usually within 50 working days.

Publication of Decision

- A1.33 Where Ofcom has found that a broadcaster has breached a relevant requirement(s), Ofcom will publish its Decision in Ofcom's Broadcast Bulletin²⁷ and/or in the relevant broadcast licensing section of the website.
- A1.34 Before publishing the Decision, Ofcom will provide the broadcaster with a strictly embargoed copy of the Decision for the purpose of correcting factual inaccuracies only. The broadcaster will usually be given 48 hours in which to respond with such corrections, following which Ofcom will publish the Decision.
- A1.35 Ofcom will also normally publish information in its Broadcast Bulletin about Decisions in which it has found that the broadcaster has **not** breached a "public facing" relevant requirement(s). "Public facing" relevant requirements relate to the content broadcast or broadcaster's dealings with the public (including with complainants), such as a broadcaster failing to provide a broadcast service, its compliance with its Format, Key Commitments or Programming Commitments or its access services requirements. Where, in accordance with paragraph A1.27, Ofcom has not published details of an issue under investigation, Ofcom would not normally publish a "not in breach" decision at the conclusion of the investigation, but there may exceptional cases where we do publish (such as where there is a high level of public awareness of, and interest in, the matter complained of).

Non-Disclosure

- A1.36 Subject to any relevant obligations, it is an essential part of the integrity of Ofcom's processes that all parties concerned abide by all Ofcom's published rules and procedures. These require, for example, that parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint or case²⁸ during the course of the investigation (see text box below). This requirement of non-disclosure does not limit what Ofcom can publish in its Decision at the end of the investigation.

²⁷ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.

²⁸ Ofcom is obliged to meet various statutory obligations relating to the disclosure of information (for example, under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004). Such obligations do not allow the use of exemptions by Ofcom in an arbitrary fashion. Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations and nothing in these General Procedures can prevent Ofcom from doing so.

Non-Disclosure

Parties (complainants, broadcasters and Ofcom) may, unless otherwise indicated, make public the fact that a complaint has been made or that Ofcom is investigating a case. They may also use any information which is already in the public domain.

However, all parties are subject to the requirement of non-disclosure in relation to all other material submitted and communications/correspondence entered into in relation to that complaint or case²⁹. Moreover, once a complaint has been made or Ofcom has started investigating a case, no party 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.

Failure to follow these requirements may result in Ofcom ceasing to consider the party's representations.

Time limits

- A1.37 Complainants and broadcasters should keep to the time limits specified in these General Procedures. Any complainant or broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.
- A1.38 Ofcom may consider it appropriate (in the interests of fairness and/or to properly carry out an investigation) to amend or adapt the time limits set out in these General Procedures in a particular case. In addition, where Ofcom considers that a particular case raises issues that require the investigation to be expedited, Ofcom may shorten the time limits set out in these General Procedures in that particular case. These might, if Ofcom considers it appropriate, mean that the time limits are reduced to a matter of hours, for example if Ofcom has significant concerns about the broadcaster and considers that it is in the public interest to expedite the investigation.

Sanctions

- A1.39 Where Ofcom determines that there has been a breach (or breaches) of a relevant requirement, Ofcom may consider that it justifies consideration of the imposition of a statutory sanction against the broadcaster. 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, repeatedly³⁰, or recklessly breached a relevant requirement. If Ofcom is minded to consider the imposition of a sanction, it will make that clear in its Decision and the Sanctions Procedures will apply³¹.

²⁹ 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.

³⁰ 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.

³¹ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures--sanctions/>

Directions

- A1.40 Ofcom has the power under the Broadcasting Acts³² to issue a direction pursuant to a broadcaster's licence. This does not apply to the BBC or S4C and is limited to persons holding licences issued under those Acts.
- A1.41 Ofcom may issue such a direction in any case it considers appropriate. This may include, for example, cases in which, in Ofcom's view there are reasons which make the taking of a specific step by a broadcaster appropriate. A Notice of Direction will normally be published in Ofcom's Broadcast Bulletin³³.
- A1.42 Failure by a broadcaster to comply with a direction issued by Ofcom pursuant to its licence can lead to the consideration of the imposition of statutory sanctions against the broadcaster (for example, the imposition of a financial penalty, or the revocation of a licence). In such cases, the Sanctions Procedures would apply.

³² Of 1990 and 1996. See, for example, sections 4(2) and 87(2) of the 1990 Act.

³³ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.