



# General Procedures for investigating breaches of broadcast licences

A consultation on proposals to publish General Procedures  
for investigating breaches of broadcast licences

Consultation

Publication date: 19 July 2013

Closing Date for Responses: 27 September 2013



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## Section 1

# Executive Summary

- 1.1 Ofcom proposes to publish its procedures when investigating possible breaches of broadcast licences (“the General Procedures”). Ofcom has already published various specific procedures for investigating particular types of breaches<sup>1</sup>, but there are currently no published procedures which cover how Ofcom investigates breaches of licence conditions generally (where they are not covered by one of the specific procedures). The purpose of this consultation is to seek stakeholders’ views on the proposed General Procedures.
- 1.2 Ofcom is the UK body responsible for issuing licences to television and radio broadcasters. Broadcasters must adhere to a number of specific requirements placed in their licences<sup>2</sup> which enable Ofcom to fulfil our duties. These duties include securing the availability throughout the United Kingdom of a wide range of TV 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.
- 1.3 Ofcom may launch investigations into possible breaches of broadcasters’ licences. These investigations play a crucial role in ensuring that the public is appropriately protected.
- 1.4 Where Ofcom is investigating a breach of licence condition that is not covered by one of the published specific procedures, the procedures that Ofcom follows are notified to the licensee at the time of the investigation but the procedures are not currently in published form.
- 1.5 It is important that our procedures for carrying out these investigations are as transparent, effective and efficient as possible. We are therefore proposing to introduce these 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.
- 1.6 Ofcom expects that licensees will be largely familiar with the content of the General Procedures and will recognise similarities in approach to our published Standards Procedures. However, we are proposing a number of changes to the way we currently investigate possible breaches of licence conditions in order to ensure continued fairness and transparency to the parties involved. These changes would be:

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<sup>1</sup> These specific procedures are the *Procedures for investigating breaches of content standards for television and radio* (“the Standards Procedures”); the *Procedures for consideration and adjudication of fairness and privacy complaints*; and the *Enforcement Guidelines*, which apply to investigations of compliance with conditions and codes to ensure fair and effective competition in the provision of broadcast services (see footnotes 6 to 9 below).

<sup>2</sup> In the case of the BBC and S4C who do not hold a licence these are called “relevant enforceable requirements”.

- Introduction of an initial assessment stage for cases where we receive a complaint (there will not be an initial assessment stage for own initiative investigations);
- Publication of a list of complaints which Ofcom has assessed and decided not to investigate further;
- Publication of a list of all investigations;
- Publication of a list of all decisions following investigation (and, where appropriate, the text of the decision);
- Time limit for provision of recordings; and
- Introduction of key performance indicators (“KPIs”) for both the assessment of complaints and the completion of investigations.

## Next steps

- 1.7 This document sets out our proposals for publishing the General Procedures for investigating breaches of broadcast licences. The proposed text of the General Procedures is set out at Annex 1.
- 1.8 We set out our questions on the General Procedures at paragraphs 2.15 and 2.16. Written views and comments are requested by 27 September 2013.
- 1.9 Following the end of the consultation period, Ofcom will consider carefully all responses received and will publish a finalised version of the General Procedures together with a statement explaining how Ofcom has taken account of the responses to the consultation.

## Section 2

# Consultation

## Background

- 2.1 Ofcom is the UK body responsible for issuing licences to television and radio broadcasters.
- 2.2 Ofcom has general duties in relation broadcasting which include securing the availability throughout the United Kingdom of a wide range of TV 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 radio station to deliver “the proposition” set out in its published Format.
- 2.3 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 BBC<sup>3</sup> and S4C<sup>4</sup>, 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 proposed General Procedures at Annex 1.
- 2.4 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 breach of the types shown in the table below would generally be investigated under the corresponding specific procedure.

<b>Category of regulatory requirement</b>	<b>Specific procedure</b>
Content standards objectives set out under section 319 of the Communications Act 2003 and applied in the Ofcom Broadcasting Code and other codes <sup>5</sup>	Procedures for investigating breaches of content standards for television and radio <sup>6</sup>

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<sup>3</sup> 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”.

<sup>4</sup> The Welsh Authority operates its television service under the name S4C.

<sup>5</sup> “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>.

<sup>6</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

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 <sup>7</sup>
Licence conditions and relevant codes to ensure fair and effective competition in the provision of broadcast services <sup>8</sup>	Enforcement Guidelines, Ofcom’s guidelines for the handling of competition complaints and complaints concerning regulatory rules <sup>9</sup>

2.5 There are currently no published procedures which cover how we investigate breaches of licence conditions other than those listed in the table above. Ofcom proposes to publish the General Procedures which would apply to investigations of breaches of all other categories of regulatory requirement which are not included in the list above.

## Why are we proposing to introduce the General Procedures?

2.6 Ofcom may launch investigations on its own initiative as well as investigate complaints made by others. The assessment of complaints about, and investigations into, possible breaches of broadcasters’ licences play a crucial role in ensuring that the public is appropriately protected.

2.7 Ofcom follows a procedure for investigating possible breaches of licence conditions, which is not currently in published form, and this procedure is notified to the licensee at the time of the investigation.

2.8 It is important that our procedures for carrying out these investigations are as transparent, effective and efficient as possible. We are therefore proposing to introduce these 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.

<sup>7</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

<sup>8</sup> 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 proposes to apply the General Procedures for breaches of (i) and (ii).

<sup>9</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement\\_guidelines.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf), paragraphs 2.22 to 2.24.

## What are the key proposed changes to our current approach to investigating possible breaches of licence conditions?

- 2.9 Ofcom expects that licensees will be largely familiar with the content of the General Procedures and will recognise similarities in approach to our published Standards Procedures. However, we are proposing a number of changes to the way we currently investigate possible breaches of licence conditions.
- 2.10 In considering changes to our current approach, Ofcom aims to ensure that it maintains high quality decision-making and that fairness and transparency (to all stakeholders) continues to be at the heart of the procedures. We consider that the proposed changes fulfil these two important criteria.
- 2.11 The key changes to our current approach or that differ from our Standards Procedures are that we propose to:
- 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 will decide whether to open an investigation (paragraphs A1.23 to A1.26 of the General Procedures at Annex 1).
  - Publish a list of those complaints which have been assessed but not pursued in an investigation. We propose that these will be published as a table in Ofcom's Broadcast Bulletin<sup>10</sup>, setting out the name of the licensee and the licensed service and describing in broad terms the category of relevant requirement to which the complaint relates (for example, "provision of access services") (see Annex 2).
  - Publish a list of all cases we are investigating. We propose that this will be published as a table in the Broadcast Bulletin, setting out the name of the licensee and the licensed service (see Annex 2). We propose 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.
  - Publish all decisions following investigation. For decisions that a licensee is in breach of a relevant requirement, we propose that we would normally publish the decision in full (subject to redaction of any confidential information). For decisions that a licensee is not in breach of a relevant requirement, we propose to publish information about the decision (see paragraphs A1.33 to A1.35 of the General Procedures at Annex 1 and also Annex 2). The amount of information we publish on non-breach decisions may range from identifying the licensee, the licensed service and the category into which the investigation fell, to providing more detailed information on the investigation and our reasons for the decision. We consider 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 helpful for other broadcasters to be aware of; or if there has been a high level of public interest in the investigation.
  - Standardise the length of time for provision of recordings to five working days (paragraph A1.24 of the General Procedures at Annex 1). This is consistent with

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<sup>10</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.



the Standards Procedures and the Fairness and Privacy Procedures and is a change from current practice for some categories of broadcasting licence, where the licensee is given 10 working days to provide recordings.

- Introduce KPIs for both the assessment of complaints (15 working days) and the completion of investigations (50 working days). These mirror the KPIs in our Standards Procedures.

## What is the impact of our proposals?

- 2.12 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.
- 2.13 We do not consider that our current proposals are likely to have a significant effect on businesses or the general public, nor do they represent a major change in Ofcom's activities. This is because the principal purpose is to formalise our existing practice, thereby providing transparency and clarity in relation to our procedures for investigating breaches of broadcast licences. We are not proposing to make significant changes to those procedures. Therefore, we are of the view that a full impact assessment is not necessary.
- 2.14 We have also considered what (if any) impact the proposals in this consultation may have on equality. We do not consider the impact of the proposals in this consultation to be to the detriment of any group within society.

## Consultation questions

- 2.15 Do you agree with Ofcom's proposal to publish the General Procedures?
- 2.16 Do you agree with the key changes to our current approach identified at paragraph 2.11 above?

## Next steps

- 2.17 Annex 1 of this document sets out our proposed text for the General Procedures.
- 2.18 Annex 2 sets out examples of the proposed form of the lists of: complaints which have been assessed but not pursued and investigations.
- 2.19 We set out our questions on the General Procedures at paragraphs 2.15 and 2.16. Written views and comments are requested by 27 September 2013.
- 2.20 Following the end of the consultation period, Ofcom will carefully consider all responses and will publish a finalised version of the General Procedures together with a statement setting out how we have taken account of consultation responses.

## Annex 1

# Draft General procedures for investigating breaches of broadcast licences

## Introduction

- A1.1 This document outlines Ofcom’s General procedures for investigating possible breaches by broadcasters<sup>11</sup> (“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”)<sup>12</sup>.
- 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 [DATE]. 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).

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<sup>11</sup> References to “broadcasters” in these General Procedures are to any radio or television broadcaster licensed and/or regulated by Ofcom.

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

A1.7 Ofcom also has more specific duties in relation to, for example<sup>13</sup>:

- 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 duties<sup>14</sup>. 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 functions<sup>15</sup> 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 requirements<sup>16</sup>.

A1.10 Relevant requirements that the BBC and the Welsh Authority are subject to include those under the Code on Television Access Services<sup>17</sup>, requirements on

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<sup>13</sup> This is not an exhaustive list of Ofcom's specific duties that give rise to relevant requirements to which these General Procedures apply.

<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

independent programme quotas<sup>18</sup> and retaining and producing recordings when required by Ofcom to do so<sup>19</sup>.

## 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 <sup>20</sup>	Procedures for investigating breaches of content standards for television and radio <sup>21</sup>
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 <sup>22</sup>
Licence conditions and relevant codes to ensure fair and effective competition in the provision of broadcast services <sup>23</sup>	Enforcement Guidelines, Ofcom's guidelines for the handling of competition complaints and complaints concerning regulatory rules <sup>24</sup>

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> "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>.

<sup>21</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

<sup>22</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

<sup>23</sup> 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).

<sup>24</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement\\_guidelines.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf), paragraphs 2.22 to 2.24.

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);
- 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 on Television Access Services (i.e. subtitling, sign language and audio description)<sup>25</sup>;
  - the Code on Sports and Other Listed and Designated Events<sup>26</sup>;
  - the Code on Electronic Programme Guides (in respect of issues relating to prominence of public service channels and access services)<sup>27</sup>; and
  - technical codes for television<sup>28</sup> and radio<sup>29</sup>.

## 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 output<sup>30</sup>.

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<sup>25</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2013.pdf>

<sup>26</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom\\_code\\_on\\_sport.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf).

<sup>27</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>. See also footnote 13 above.

<sup>28</sup> For example, the Television Technical Performance Code ([http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/tv\\_tech\\_platform\\_code.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/tv_tech_platform_code.pdf)).

<sup>29</sup> 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](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](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/policy_guidance.pdf)).

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](mailto:tv.licensing@ofcom.org.uk)
- Complaints about a community radio station: [community.radio@ofcom.org.uk](mailto:community.radio@ofcom.org.uk)
- Complaints about a commercial radio station: [commercial.radio@ofcom.org.uk](mailto:commercial.radio@ofcom.org.uk)
- Complaints about a temporary radio station (also known as a Restricted Service Licence or RSL): [rslenquiries@ofcom.org.uk](mailto: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 Ofcom<sup>31</sup>. 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](#)<sup>32</sup>.

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](mailto: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.

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<sup>30</sup> 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, ITV1, Channel 4, Channel 5, S4C and digital terrestrial television channels for 90 days.

<sup>31</sup> 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/>.

<sup>32</sup> <https://stakeholders.ofcom.org.uk/tell-us/subs-signs-audio>

- 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 broadcaster<sup>33</sup>.

### **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 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<sup>34</sup>. 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. If not, Ofcom will not investigate further. We will normally notify the complainant of our decision either not to pursue the matter or to launch an investigation. We will publish the decision in a relevant location on our website.
- 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 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. Ofcom will publish details of issues under investigation in a relevant location on our website.
- 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 complaint(s).

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<sup>33</sup> 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.

<sup>34</sup> 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".

## 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 Committee<sup>35</sup> or the Content Board<sup>36</sup>, 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.
- 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.

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<sup>35</sup> <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/broadcast-licensing-committee/>.

<sup>36</sup> <http://www.ofcom.org.uk/about/how-ofcom-is-run/content-board/>.



## 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 Bulletin<sup>37</sup> 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 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.

## 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 case<sup>38</sup> 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.

### 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 case<sup>39</sup>. 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.

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<sup>37</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.

<sup>38</sup> 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.

<sup>39</sup> Ofcom may withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the broadcaster will be notified that relevant material has been withheld and the reasons why.

## Time limits

- 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 licensee 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, repeatedly<sup>40</sup> or recklessly breached a relevant requirement. If Ofcom is minded to consider imposition of a sanction, it will make that clear in its Decision and the Sanctions Procedures will apply<sup>41</sup>.

## Directions

- A1.40 Ofcom has the power under the Broadcasting Acts<sup>42</sup> 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 Bulletin<sup>43</sup>.
- 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.

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<sup>40</sup> 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.

<sup>41</sup> See footnote 12.

<sup>42</sup> Of 1990 and 1996. See, for example, sections 4(2) and 87(2) of the 1990 Act.

<sup>43</sup> See footnote 35.

## Annex 2

# Examples of the proposed form of publication of investigations list and decisions

### Complaints assessed, not investigated

#### Between [relevant dates]

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Licensee	Categories
Licensee A	General provision of information to Ofcom
Licensee B	Payment of licence fees
Licensee C	Provision of sound broadcasting service

OR

Programming	Licensee	Transmission date(s)	Categories
Programming	Licensee A	dd/mm/yyyy to dd/mm/yyyy	Format
Programme name	Licensee B	dd/mm/yyyy	Television Access Services
n/a	Licensee C	n/a	Maintain key commitments

## Investigations List

If Ofcom considers that a licensee may have breached a condition of its licence or other regulatory requirement, it will start an investigation.

Here is an alphabetical list of such investigations launched between [relevant dates].

<b>Licensee</b>	<b>Licensed Service</b>
Licensee A	Licensed service A
Licensee B	Licensed service B
Licensee C	Licensed service C

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the licence or other regulatory requirements being recorded.**

## Other Investigations Not in Breach

Up to [relevant date]

<b>Licensee</b>	<b>Categories</b>
Licensee A	General provision of information to Ofcom
Licensee B	Payment of licence fees
Licensee C	Provision of sound broadcasting service

## Annex 3

# Responding to this consultation

## How to respond

- A3.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 September 2013**.
- A3.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/general-procedures/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 5), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A3.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email [General.Procedures@ofcom.org.uk](mailto:General.Procedures@ofcom.org.uk), attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A3.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Lauren Cleverley  
5<sup>th</sup> Floor  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A3.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A3.6 It would be helpful if your response could include an explanation as to why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A3.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Lauren Cleverley on 020 7783 4323.

## Confidentiality

- A3.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A3.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. However sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>.

## Next steps

- A3.11 Following the end of the consultation period, Ofcom intends to publish a statement in December 2013.
- A3.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

- A3.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 4.
- A3.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 4

# Ofcom's consultation principles

A4.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A4.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A4.3 We will be clear about who we are consulting, why, on what questions and for how long.

A4.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A4.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A4.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's "Consultation Champion" will also be the main person to contact with views on the way we run our consultations.

A4.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A4.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 5

# Consultation response cover sheet

- A5.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website: [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A5.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A5.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A5.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the “Consultations” section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A5.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.



## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing  Name/contact details/job title

Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)