

ITV's Response to Ofcom's Consultation on New Procedures for Handling Content Standards Complaints, Investigations and Sanctions for BBC Programmes

ITV welcomes the opportunity to comment on Ofcom's proposals for handling BBC content standards complaints, in the light of Ofcom's revised remit of full external regulation of content standards for the BBC's UK public broadcasting services, and the new requirement for BBC ODPS to comply with the provisions of the Broadcasting Code ("the Code"), insofar as Ofcom determines them relevant.

We have discussed the proposals with our fellow Channel Three licensee STV, and they support our response below.

We appreciate that Ofcom's approach is to some degree governed by the new Royal Charter and Framework Agreement for the BBC, which sets out the broad structure for how the BBC's programme output will be regulated by Ofcom. Our view is that, as far as possible, Ofcom should seek to operate the same procedures for dealing with complaints and investigations about the BBC's UK Public Broadcasting Services programme output as it does for all other licensed broadcasters and, subject to statutory limits, approach the consideration of sanctions in a consistent manner.

We do not object to the "BBC First" approach, requiring complainants to raise standards complaints with the BBC and to exhaust the BBC's internal complaints system, before Ofcom considers such complaints. However, we would ask Ofcom to apply the same approach to all broadcasters – in other words to adopt a "Broadcaster First" approach to standards complaints. Whilst the existing procedures have paid lip service to encouraging complainants to raise complaints with broadcasters first, we would suggest that the new regime of regulation of the BBC gives Ofcom an excellent opportunity to now apply an even-handed approach, and to "normally" direct complainants to seek to resolve complaints with all broadcasters, before considering such complaints itself.

We agree that Ofcom can and should reserve the ability to launch investigations on its own initiative, as well as to investigate complaints.

We respond to other specific elements of the consultation question below:

Consideration and investigation of breaches of content standards

A4.15 - We suggest that the BBC cannot simply consider complaints against its own Editorial Standards, but must explicitly consider complaints against the Code, as all other broadcasters do. The BBC can of course decide whether or not a programme has complied with its own Editorial Standards, and take such steps as it deems appropriate, but the regulatory requirement against which complaints should be considered is the Code. That is also the clear logic of the statement at paragraph A4.19.

If the BBC responds to a complaint by concluding that the Code has not been breached, and the complainant is unsatisfied with this outcome, then the complainant can ask Ofcom to consider their complaint and the BBC's response. This would bring the BBC in line with all other broadcasters.

If the BBC concludes that its Editorial Guidelines were breached, but that this did not also involve a breach of the Code, again it can take whatever action it considers necessary in respect of the former, in consultation with the relevant producers. Should the complainant remain unsatisfied, they can ask Ofcom to consider further whether there has also been a breach of the Code.

A4.23 – other than in relation to whistleblowers, we can see no rationale for complainants remaining anonymous. Indeed, there are some circumstances where it could be potentially unfair for the broadcaster not to be told the identity of the complainant. An example would be a complaint about the due accuracy or impartiality of a programme, made by a person, organization or government criticized in that programme, or opposed to particular viewpoints represented in that programme.

A4.35 – we cannot see how it could ever be reasonable for Ofcom to come to a Preliminary View on a breach of the Code, without first seeking representations from the broadcaster, unless of course that broadcaster had already accepted that the breach in question had occurred.

A4.44 – it would be entirely unreasonable for Ofcom to provide any broadcaster with only one working day's notice of the text of a Final Decision. The text itself might well contain factual errors, and the broadcaster will require a reasonable time to consider that final text and provide Ofcom with any comments in that regard.

Ofcom's current practice is to provide broadcasters with a copy of a Decision several working days before the proposed publication in the Bulletin, and to provide the broadcaster with at least two working days to provide any corrections for the purpose of factual accuracy. We see no justification for changing this practice in relation to the BBC or other broadcasters, and the consultation provides no rationale for doing so.

We also ask Ofcom to include reference in its procedures to the fact that it will publish full Decisions, when these have been the subject of full submissions by the BBC, whether or not those Decisions find any breach of the Code. This will benefit the public in better understanding Ofcom's deliberations and the position of the BBC, and just as importantly assist other broadcasters when considering similar Code issues in future.

Consideration and adjudication of Fairness and Privacy complaints

A5.8 - As Ofcom is aware, ITV and other licensed broadcasters do not agree that Ofcom's duties under S3(2)(f) of the 2003 Act impose upon it a

requirement, much less a statutory power, to consider fairness or privacy issues in the absence of a complaint from “the person affected”, despite this purported power having been exercised against the BBC on one high profile occasion in the past. Section 111 of the Broadcasting Act 1996 is specific that a fairness or privacy complaint “shall not be entertained” by the regulator unless made by the person affected, or someone authorized by them to make the complaint. The 2003 Act did not alter that position when it transferred duties in the 1996 Act to Ofcom. We therefore ask Ofcom to take this opportunity to reconsider its position and now omit reference to this purported power in its published procedures.

A5.37 – we refer Ofcom to our submissions regarding paragraph A4.44 in relation to one working day’s notice.

A5.39 – we suggest this paragraph is unclear without further explanation of what is meant by the complainant’s “legitimate interests”, and what constitutes “serious” damage to those interests. In any case we consider the paragraph is unnecessary, and in conflict with Ofcom’s sanctions procedures, given that a direction to “include” (which we take to mean broadcast) a statement of Ofcom’s findings is among the sanctions available to Ofcom in appropriate cases under paragraph A6.10 of its sanctions procedures, and the criteria for the imposition of such a sanction is established and set out in paragraph A6.9.

Consideration of sanctions for breaches of content standards

A6.32 – we refer Ofcom again to our submissions regarding paragraph A4.44 in relation to one working day’s notice.

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