

Guidelines for the handling of fairness and privacy complaints (interim)

27 January 2004

Introduction

1. This document outlines the procedures to be followed by Ofcom in the handling of all fairness and privacy ('fairness') complaints in programmes, (in both radio and television services). Separate guidelines exist for the handling of standards complaints. It reflects the requirements of the European Convention of Human Rights (which refers to the 'right to a fair trial') and is effective from 29 December 2003.
2. The Communications Act 2003 requires Ofcom to consider and adjudicate on fairness complaints.

Form of Complaints

3. Due to their complexity, Ofcom will normally only consider fairness complaints that are in writing.
4. The details of the complaint (time; channel; programme/advertisement; nature of the complaint etc) will be logged by the Contact Centre. In most cases, because of licence requirements, Ofcom can only consider radio complaints up to 42 days after the relevant broadcast, television complaints up to 90 days except satellite and cable which can only be considered up to 60 days after the relevant broadcast. Each complaint will be acknowledged and the complainant will be given a reference number.

Complaint Assessment

5. The complaint will be assessed by a case officer experienced in handling fairness complaints. When necessary, the broadcaster will be required to provide a tape within five working days. Not all complaints received will fall into Ofcom's fairness remit. If the complaint falls outside Ofcom's fairness remit, then the complainant will be notified with an explanation as to why the complaint has not been entertained. However, if the complaint raises other matters within Ofcom's remit, the complaint will be passed to an appropriate case officer to investigate (if it is a standards matter the *Guidelines for the Handling of Standards Complaints and Cases* will apply).
6. An assessment of the complaint and a decision over whether it falls within Ofcom's fairness remit will be made by the appropriate editorial team (an 'entertainment' decision). If the complainant or broadcaster is dissatisfied with the entertainment decision, then they may request a review. A review will normally only be granted if the party dissatisfied puts forward an arguable case that the decision is flawed on judicial review grounds (for example, because of errors of fact or law or oversight of relevant factors). The review will be undertaken by the Fairness Committee (with a majority of Content Board members). This decision is final.

7. The Fairness Committee will also consider whether to entertain a complaint if Ofcom considers it is either controversial or complex.
8. The legislation sets out a number of criteria that must be satisfied before Ofcom can entertain a complaint. These are:
 - 8.1 the complainant must have a direct interest in the subject matter of the complaint
 - 8.2 the matters complained of must not be the subject of legal proceedings in the UK or be more appropriately resolved by legal proceedings in the UK *and*
 - 8.3 the complaint must not be frivolous.

Ofcom may refuse to entertain a complaint if it is not made within a reasonable time, or if the complainant's interest is not sufficiently direct. In addition, Ofcom can reject a complaint if, for any reason, it is 'inappropriate' to entertain it.

Entertained Complaints

9. If the complaint is entertained, the broadcaster will be sent a copy of the complaint and a request for a statement in response (normally within 10 working days, though fairness cases are often complex and broadcasters may require longer).
10. On receipt of the statement, Ofcom will copy it to the complainant. Ofcom will then consider whether further information is required and continue the correspondence as necessary. The complainant and the broadcaster see all the relevant correspondence.

Executive Resolution

11. If Ofcom considers the case straightforward, then it is passed to the 'Executive Fairness Group' (which will be made up from members of Ofcom's executive). The Executive Fairness Group will make a recommendation, explaining fully its reasons, to both parties. The recommendation could encompass a variety of scenarios such as the complaint is not upheld; the complaint is upheld; the complaint is upheld and the broadcaster should, if appropriate, apologise privately or broadcast and/or publish a summary of its adjudication. If both parties accept the recommendation then the complaint has been satisfactorily resolved.
12. However, if either of the parties does not accept the executive's recommendation, that party may make a request for the complaint to be passed to the Fairness Committee. Such a request will only normally be granted if the party dissatisfied puts forward an arguable case that the recommendation is flawed on judicial review grounds (for example, because of errors of fact or law or oversight of relevant factors).

Content Board Adjudications

13. The Fairness Committee will consider either complaints where parties have not accepted the executive's recommendation and a review has been accepted or cases that Ofcom considers complex or controversial.
14. However, when necessary, (for instance in the case of conflicting evidence) the Fairness Committee may decide to hold a hearing. Normally three weeks notice will be given to the parties. If appropriate, hearings may take place in Scotland, Wales or Northern Ireland.
15. Hearings are held in private. A representative from Ofcom will make notes, but the hearings will not be recorded. Each of the parties may bring to the hearing any other person (normally up to a maximum of three). Their names and a description of their purpose should be given to Ofcom at least seven working days before the hearing.
16. The procedure at the hearing is normally as follows:
 - the chairman explains the proceedings
 - the complainant briefly summarises his/her case
 - the broadcaster briefly answers the case
 - members of the Fairness Committee and staff present may put questions to the broadcaster and/or the complainant
 - at the chairman's discretion the two parties may ask each other questions
 - the broadcaster then concludes with a brief final statement followed by the complainant.
17. New material is not normally accepted at the hearing.
18. The Fairness Committee will decide, in cases referred to or considered by it, if the complaint is upheld; upheld in part or not upheld. The decision of the Fairness Committee will be final.

Adjudications Generally

19. If a complaint is upheld in whole or in part, then Ofcom will publish an adjudication. It may also direct the broadcaster to transmit and/or publish a summary of its adjudication.
20. Both parties will have the opportunity to comment on factual errors in the summary of the adjudication and draft press release (if one is released) before publication.

Sanctions

21. If Ofcom considers that there has been a serious breach of the Fairness Code that warrants consideration of a statutory sanction it will refer the case back to a case officer to investigate whether a serious Code breach has occurred. The *Outline for Statutory Sanctions in Content Cases* will then apply.