

## **Ofcom's response to its consultation on its proposed guidelines for the handling of fairness and privacy complaints**

**This is Ofcom's response to representations made to its short consultation, in December 2003, on the proposed guidelines for the handling of fairness and privacy complaints.**

Ofcom's procedures for the handling of broadcast complaints had to be in place by vesting day (29 December 2003). As explained in the consultation, Ofcom will conduct a full public consultation in 2004 on the handling of broadcast complaints,. This will include the issue of whether Ofcom or the broadcaster itself should normally be the first point of contact for any complainant. Nevertheless, Ofcom felt it was appropriate to give any interested parties an opportunity to make representations on these procedures. We are grateful to all those who took the time to share their views with us and have carefully considered the points that arose.

Ofcom received 19 responses to its consultation on proposed guidelines for the handling of standards complaints and cases and fairness and privacy complaints. The following organisations responded:

- A joint response from the BBC, Granada, Carlton, Channel 4, Five, ITN and Commercial Radio Companies Association ("The Joint Response")
- The Advertising Association
- The Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP)
- British Heart Foundation
- Chrysalis Radio
- Flextech Television
- Hearing Concern
- Lincs FM plc
- mediawatch – uk
- Ofwatch
- BACC
- A private individual

- QVC
- Radio Advertising Clearance Centre (RACC)
- Scottish TV
- Shetland Islands Broadcasting (SIBC FM)
- Teletext
- Voice of the Listener and Viewer
- A broadcaster who wished to remain anonymous

# Ofcom response to its consultation on its 'Guidelines for the Handling of Fairness and Privacy Complaints'

## 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.

*No comments received. A reference to teletext and advertisements will be included to clarify that programmes include advertisements for this purpose.*

2. The Communications Act 2003 requires Ofcom to consider and adjudicate on fairness complaints.

*The joint response argued that thought should be given as to whether the broadcaster should be allowed to respond to all complaints and seek to resolve them in the first instance before they were considered by Ofcom. A fairness complaint should only go to Ofcom in the event that the complainant was dissatisfied.*

*Lincs FM plc also suggested that the first response from Ofcom should be, as in the case of standards complaints, to encourage the complainant to contact the broadcaster to see if the issue could be resolved.*

### Ofcom's response:

A complainant has every right to go to the broadcaster in the first instance but if a complainant who has been directly affected by a programme chooses to come to Ofcom then it is important to deal with the complaint in a timely fashion. Under the Broadcasting Act 1996/Communications Act 2003, Ofcom has a duty to consider and adjudicate on fairness and privacy complaints that are within its remit and are properly made. In fairness and privacy cases Ofcom has no right to insist that a complainant goes to the broadcaster first.

However, the broadcaster has ample opportunity on notification that a complaint has been entertained to attempt to resolve the issue before Ofcom makes a finding. Ofcom is unlikely to proceed with consideration of a complaint (unless an important point of principle or significant breach of code is involved) if the complainant withdraws the complaint or if the broadcaster makes an apology which Ofcom considers adequate redress.

## Form of complaints

3. **Due to their complexity, Ofcom will normally only consider fairness complaints that are in writing.**

*The joint response expressed the view that complaints should always be set out in writing, in the interests of natural justice and to ensure that all parties receive a fair hearing, and advocated the use of a standard form in each case.*

### **Ofcom's response:**

Ofcom will normally require a complaint to be in writing but considers that there may be exceptional circumstances, such as a complaint from someone who is blind, where it should be accepted in a form other than in writing (as allowed by the Acts). Ofcom may also need (or be asked by the broadcaster) to seek further information on the telephone and such information may form part of the complaint. In such circumstances, Ofcom will itself record the complaint, or further information received, in writing. Ofcom will also normally require completion of its fairness and privacy complaint form

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.**

*Scottish Television suggested that the time limits for satellite and cable should be the same as for other television programmes.*

### **Ofcom's response:**

Ofcom is bound by the current licence requirements. As outlined in Ofcom's response to its Broadcast License Consultation it believes that it is not unreasonable to expect the Public Service Broadcasting channels to retain recordings for longer. These services generate the majority of complaints as they continue to gain the largest audiences.

## 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).

*The joint response expressed the view the complainant should be allowed to put the case as he or she thinks appropriate and the complaint should not be recast or interpreted by Ofcom; Ofcom should limit itself to the matters raised by the complainant and not seek to expand a complaint to cover areas not raised by the complainant*

### Ofcom's response:

Ofcom recognises that complainants are not always familiar with its code and considers it appropriate to reserve a degree of flexibility as regards recasting or interpreting a complaint. For example, complainants may describe as an unfairness complaint what is in fact a privacy complaint, and vice versa, and in these circumstances Ofcom considers it appropriate to recast the complaint, with the complainant's consent, in the correct form. Ofcom may also seek further information in order to determine whether the complaint is within its remit or to understand the basis on which the complaint is made. Ofcom will not normally invite a complainant to cover areas not originally included in the complaint. However, Ofcom again considers it appropriate to reserve a degree of flexibility where, for example, a matter is raised in terms that suggest the omission is due to the complainant's lack of familiarity with the code.

6. An assessment of the complaint and a decision over whether it falls within Ofcom's fairness remit will be normally 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.

*Chrysalis Radio expressed the view that the fairness procedures were unduly bureaucratic and cumbersome and suggested that fairness and privacy complaints should, as with standards complaints, be dealt with by a single case*

*officer, referring to senior colleagues as required for accountability and where the case was complex.*

*Flextech Television pointed out that it is not possible to exclude judicial review of any decision of the Fairness Committee.*

**Ofcom's response:**

Ofcom considers that, given the quasi-judicial nature of its adjudication function in respect of fairness and privacy complaints and the greater volume and complexity of the material collected, it is in the interests of fairness to involve more than one officer in decisions where appropriate, with discretion to refer complaints for scrutiny at the more senior level of the Fairness Committee.

Ofcom is not seeking to exclude the possibility of judicial review. The decision of the Fairness Committee is described as final because it is not open to internal review in the same way as some executive decisions are.

The guidelines have been amended to clarify the basis on which the Fairness Committee will consider reviews.

**7. The Fairness Committee will also consider whether to entertain a complaint if Ofcom considers it is either controversial or complex.**

*The joint response queried whether the Fairness Committee's test of a complaint being "controversial or complex" was appropriate; the fact that a complaint was controversial or complex was irrelevant in determining whether it should be entertained and in the interests of fairness all complaints should go through the same initial review regardless of the nature of the case.*

*Scottish Television queried whether this meant that Ofcom might not consider a complaint because it was too controversial or complex. The joint response advocated that this term be removed from the draft procedures.*

**Ofcom's response:**

The word controversial will no longer figure in the guidelines. Ofcom believes that there may be a variety of reasons why an entertainment decision should be considered at a more senior level (for example, if it involves a significant policy decision). It has therefore amended the guidelines to provide for entertainment decisions and adjudications to be referred to the Fairness Committee at Ofcom's discretion. Ofcom is in its early stages, so it is difficult to specify all the circumstances in which a complaint might be referred to the Fairness Committee. The most likely reason will be because it is complex. However, it should be noted that complaints will receive the same consideration regardless of the identity of those considering them. The purpose of referring complex cases to the Fairness Committee is to ensure such cases receive wider scrutiny at a senior level. In determining whether to entertain complaints, Ofcom will apply the same criteria in all cases and whether a complaint is complex will not be a

relevant factor. This will be the case whether the entertainment decision is made by members of the Ofcom executive or the Fairness Committee.

Ofcom would not reject a case simply because it was complex or controversial.

**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.**

*The joint response argued that Ofcom's power to refuse to entertain complaints not made within a reasonable time lacked certainty and that complaints not brought within 90 days (60 for satellite and cable) should not be entertained unless there were compelling reasons for the delay.*

*Scottish Television asked for a clearer definition of "direct interest" and suggested the words "and vexatious" be added after "frivolous" in 8.3. It also asked for a definition of the period considered reasonable.*

**Ofcom's response:**

Ofcom agrees that there would have to be good reasons for a delay (for example the complainant was out of the country at the time of broadcast). Under the Broadcasting Act 1996/Communications Act 2003, Ofcom may refuse to entertain a fairness complaint if it appears to it not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast. Ofcom is obliged to consider on a case by case basis whether any delay is reasonable. Ofcom always requests reasons for delay where a complaint is made more than three months after the latest broadcast.

The term "direct interest" is used in the legislation and has been the subject of judicial interpretation on several occasions. It is not susceptible to brief definition and Ofcom has a duty to consider on a case by case basis, in the light of case law, whether a complainant has a direct interest. Paragraph 8.3 merely repeats the wording of the Broadcasting Act 1996; there is no obligation on Ofcom in the Act to refuse to entertain a complaint on the basis that it is vexatious but of course it has the discretion to do so.

## 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).**

*The joint response asked for the period for provision of the statement in response to be extended to 20 working days for the first submission and 10 working days for the subsequent submission, with Ofcom willing to extend these periods at the reasonable request of either party.*

*They also said that the procedure should specifically state that the broadcaster would receive any other documentation supplied by the complainant to Ofcom.*

### **Ofcom's response:**

We accept that fairness and privacy cases can involve complex issues, and longer than 10 working days will be allowed where necessary. However, 10 working days for the first submission and a week for subsequent submissions should be adequate in straightforward cases. Ofcom will always consider requests for extensions.

It has always been Ofcom's intention to copy to each party all the documentation supplied by the other which relates to the matters in issue and which the Executive Fairness Group/Fairness Committee will consider, or have sight of, as part of its adjudication. The guidelines will make that plain.

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.**

*The joint response asked Ofcom to adopt a two-stage exchange of statements and objected that the reference to continuing the correspondence as necessary lacked certainty and could easily lead to unfairness; it asked that Ofcom should also specify which elements of a complaint have been entertained. The joint response also queried whether the parties should see all documentation "which relates to a matter in issue and which Ofcom will consider or have sight of as part of its adjudication", rather than "all the relevant correspondence" to avoid Ofcom pre-judging the relevance of material.*

### **Ofcom's response:**

Where necessary Ofcom would go to a second exchange of statements and the guidelines will be amended to make this plain. However Ofcom is keen to avoid unnecessary repetition and the burden that can place on both broadcaster and complainant. It will help identify the relevant issues if



Ofcom can request specific information in some cases, instead of simply going automatically to a second round, or after the second round has occurred.

As a matter of practice, Ofcom does inform the broadcaster which elements of a complaint (if any) have not been entertained.

We have adopted an amendment of the proposed wording regarding 'relevant' correspondence into the guidelines so that it reads as follows: 'The complainant and the broadcaster will see all the documentation which relates to a matter in issue and which the Executive Fairness Group/Fairness Committee will consider, or have sight of, as part of its adjudication'. Ofcom will normally put all the documentation received before the Executive Fairness Group/Fairness Committee. However, in some cases irrelevant material is received in large quantities and in these circumstances Ofcom needs to reserve the right to exclude such material from consideration by the Executive Fairness Group/Fairness Committee.

## 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.**

*The joint response asked that the need for a hearing be considered in every case, subject to the discretion of Ofcom, to avoid unnecessary and costly recourse to the courts. It queried the omission of reference to upholding a complaint in part and asked for clarification as to who would decide if a case was complex and what criteria would be adopted. The joint response felt that recommending a private apology would be an unacceptable expansion of Ofcom's remit and lead to dispute between the broadcaster and Ofcom on the grounds that an apology would be made by the broadcaster of its own volition if the broadcaster felt it was appropriate, but that a forced apology would appear grudging, could disadvantage the broadcaster, was unlikely to stay private and so could be misrepresented and went beyond what a court could order.*

*Scottish Television expressed the view that it should be made clear to the broadcaster what result there should be after an adjudication and that Ofcom should clarify what might cause it to consider a complaint complex or controversial.*

## **Ofcom's response:**

Ofcom will continue to consider whether there should be a hearing in every case. Ofcom recognises the value of a hearing in fairness and privacy cases. It is not envisaged that the number and role of hearings will be reduced by Ofcom.

Ofcom accepts that complaints may be upheld in part and has amended the guidelines accordingly.

The appropriate member(s) of the Ofcom executive will decide whether a case should be referred to the Fairness Committee, for example because it is complex. Ofcom considers that it will be reasonably apparent which cases are complex and which are straightforward, and that it is not feasible to specify detailed criteria.

We have recognised throughout that an apology is a matter for the broadcaster and have never intended to direct an apology. We have removed from the guidelines the reference to a recommendation to apologise.

However where a provisional decision has been made to uphold or uphold in part we wish to give the broadcaster an opportunity to redress the situation. In appropriate circumstances, any offer of redress will be taken into account in deciding whether Ofcom will issue directions in appropriate circumstances.

Ofcom does not believe that it should be recommending what type of redress may be appropriate from the broadcasters. This is a matter for the broadcasters.

- 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).**

*The joint response argues that the application of the judicial review test for review by the Fairness Committee was inappropriate and could create injustice, pointing out that judicial review only deals with the process of decision-making not the decision itself. The joint response asked that the right of appeal be automatic for both parties or at the discretion of the Fairness Committee following written representations. Scottish Television also considered the judicial review test too high a standard.*

*The Voice of the Listener and Viewer considered that the Fairness Committee, not Ofcom staff, should determine whether there was an arguable case that the recommendation was flawed on judicial review grounds. They also suggested that, in order to build up case law, there should be continuity of membership of the Fairness Committee for a year or two.*

### **Ofcom's response:**

Ofcom considers that the judicial review test is an adequate safeguard against miscarriages of justice. It is not confined to process and includes decisions outside a reasonable exercise of discretion. If the right of appeal were automatic and no grounds were specified, there would be every incentive for the complainant (if the complaint was not upheld) or the broadcaster (if it was) to appeal in the hope that a different panel would take a different view. It would thus lead to unnecessary duplication of work. This would also be the case if appeal were at the discretion of the Fairness Committee, who would in effect be called upon to decide whether they would have reached a different decision.

Ofcom considers that whether there is an arguable case for judicial review is essentially a legal matter, rather than a matter for the judgment of the Fairness Committee. It will therefore refer the issue to a lawyer who has not previously been involved in the case. (If the lawyer concludes there is an arguable case for judicial review, the case will be referred to the Fairness Committee to consider whether the entertainment decision or provisional decision should be changed in the light of the grounds for review.)

Ofcom considers it appropriate for membership of the Fairness Committee to include all members of the Content Board but it is intended that only up to three at a time will attend the relevant meetings. (Initially, the Fairness Committee will also normally include an external expert.) Membership will rotate to ensure a wide spread of views are brought to bear on cases but members are aware that they must take into account, when adjudicating on complaints, relevant decisions previously made by Ofcom.

The guidelines have been amended to clarify the basis on which the Fairness Committee will consider reviews.

## **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.**

*The joint response expressed concern about the complex or controversial test for the same reasons as in relation to paragraph 7.*

### **Ofcom's response:**

Please see Ofcom's response to the joint response to paragraph 7 (the word 'controversial' will no longer figure in the guidelines).

- 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.**

*The joint response expressed concern at having only three weeks notice where crucial people may be unavailable and asked that hearings be arranged “as soon as reasonably practicable for the convenience of all parties”. It argued that timeliness should not be at the expense of fairness.*

*Chrysalis Radio expressed concern at the management time and the cost involved in hearings and suggested that they put complainants at a disadvantage, so it would be fairer to conduct the entire process in writing.*

*Scottish Television was concerned that notification of the hearing might be the first notice the broadcaster had had of the complaint. It welcomed the intention to hold hearings in Scotland, Wales and Northern Ireland.*

### **Ofcom’s response:**

Ofcom of course recognises that on occasions it might not be possible for the relevant parties to attend a hearing at three weeks notice. Ofcom will continue to be flexible. However in order to manage complaints it is necessary to ensure that complaints are dealt with in a timely fashion. It is indeed an essential element of fairness to both parties to ensure a reasonable degree of expedition in dealing with complaints.

Ofcom considers that there are circumstances in which a hearing is helpful and necessary in reaching a fully informed finding on a complaint. It should also be remembered that Ofcom is under an obligation to consider whether a hearing is needed in each case.

The steps set out in paragraphs 9 and 10 (namely copying of a complaint to the broadcaster when entertained and statement/s by the broadcaster) will be taken in all cases, including those where a hearing is needed. Consequently the broadcaster will always be aware of an entertained complaint against it prior to the hearing. It is Ofcom’s intention to hold hearings in the relevant country where the complainant is made by someone from that country about a non-networked programme broadcast in that country.

- 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.**

*The joint response queried the maximum of three for those brought to a hearing and suggested in the interests of fairness it be raised to five; Ofcom should also be flexible on requiring seven working days notice of who was attending.*

*Hearing Concern asked if a palantypist could be present if a complaint by a hard of hearing/deaf person reached a hearing.*

*Scottish Television asked whether Ofcom could decide to hold hearings in public. Scottish Television and The Voice of the Viewer and Listener queried whether “any other person” included legal representation. The Voice of the Viewer and Listener also queried what the rights of legal representatives would be to make representations.*

**Ofcom’s response:**

Broadcasters or complainants may make a request that more than three attend and it will be granted if there is good reason. The limitation is there to ensure that neither side feels intimidated.

Ofcom will accept less than seven days notice of who is attending if there is good reason for the delay.

Ofcom will ensure that a palantypist is available for hearings involving a participant who is hard of hearing or deaf. We have therefore amended the guidelines to include the word “normally” before “be recorded”.

Under the Broadcasting Act 1996/Communications Act 2003, hearings must be held in private, so it is not open to Ofcom to hold them in public. Ofcom has no objection to either party being legally represented and will normally allow legal representatives to participate in 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 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.**

*No comments received*

**17. New material is not normally accepted at the hearing.**

*Flextech Television queried what new material would be accepted at a hearing and in what circumstances.*

*Scottish Television suggested this paragraph be removed as new material was likely to be brought forward, especially in respect of a complex or controversial complaint.*

**Ofcom's response:**

Ofcom does not consider it would normally be in the interests of justice to allow admission of new material which neither Ofcom nor the other party has had an opportunity to consider in advance. Ofcom would therefore not normally accept new material at a hearing unless it was relevant to the complaint and could not reasonably have been produced before the hearing. It reserves the right to adjourn the hearing if new evidence admitted requires time for consideration by Ofcom or the other party.

**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. If a complaint is upheld in whole or in part, then the Committee will publish an adjudication. It may also direct the broadcaster to transmit and/or publish a summary of its adjudication. The decision of the Fairness Committee will be final.**

*The joint response, in relation to paragraph 11 as well as this paragraph, requested a review of the circumstances in which directions were given for broadcast and/or press publication of a summary of Ofcom's findings on a complaint to avoid a disproportionate punishment on broadcasters. It expressed the view that, while there was a need to recognise that a complaint had been upheld, the current summaries were too long and largely meaningless to viewers.*

*The joint response argued there was no need to publish summaries in the press as well as on-air and that this amounted to a considerable financial penalty. The joint response suggested that broadcast should be limited to a statement that a programme had been the subject of an adjudication and directing viewers to Ofcom's website as well as giving Ofcom's details. Summaries should be broadcast at times reasonably proposed by the broadcaster to avoid damaging the viewer's relationship with and enjoyment of the channel. Summaries should only be broadcast in a relevant or trade periodical when merited by the particular facts of the case. A summary was inappropriate where the broadcaster had won the majority of grounds and the ground on which the complaint was upheld in part was insignificant.*

*The Voice of the Listener and Viewer considered that Ofcom should reserve the right to approve the summary of its adjudication and asked whether the anonymity of complainants would be preserved*

### **Ofcom's response:**

Ofcom sympathises with concerns about audience lack of interest in summaries and intends to revise the form of both adjudications and summaries to make them shorter and more user-friendly. However, it considers that the primary purpose of broadcasting a summary is to correct, in the eyes of the audience, a wrong done to the complainant. A mere statement that a programme had been subject to an adjudication would be meaningless and not a satisfactory redress for the complainant. Such broadcasts also help the audience understand the grounds on which complaints are likely to be upheld. Ofcom's primary concern in directing when the summary is broadcast will be to reach as many as possible of the original audience to the programme. However, it intends to follow the practice of the Broadcasting Standards Commission in first inviting suggestions from the broadcaster as to when the summary should be broadcast.

Ofcom does not intend to require automatic publication in the press where a complaint has been upheld. However, it considers there may be certain circumstances in which it may be appropriate, for example if the subject matter of the complaint had received widespread press publicity, and Ofcom will therefore retain the discretion to do so. Ofcom accepts that it will normally only direct that a summary be published in a periodical if merited by the particular facts of the case.

Where only one among several complaints is upheld, Ofcom will normally only direct broadcast of a summary where the upheld complaint is significant or merited by the particular facts of the case.

The requirement for any broadcast or published summary to be approved by Ofcom is in the Broadcasting Act 1996/Communications Act 2003, as is the discretion for Ofcom to anonymise a summary if there is good reason to do so.

### **19. Both parties will have the opportunity to comment on factual errors in the adjudication and draft press release (if one is released) before publication.**

*The joint response argued that the parties have five working days to respond to draft adjudications and press releases to avoid unfairness as well as inaccuracy.*

### **Ofcom's response:**

Ofcom believes that both parties should be able to make representations over whether they feel they have been fairly represented in the summary of the adjudication.

Ofcom will not publish press releases regarding these adjudications. The press will simply be informed about the adjudication. The guidelines have been amended accordingly.

The decision recorded in the adjudication is only open to review in the circumstances set out in the guidelines. The adjudication is also the official finding of Ofcom as to what is relevant to the case, and on what basis it has made its findings. Accordingly only corrections of factual or clerical errors can be accepted. Ofcom will normally allow five working days for comment.

## Sanctions

- 20. 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.**

*No comments received.*