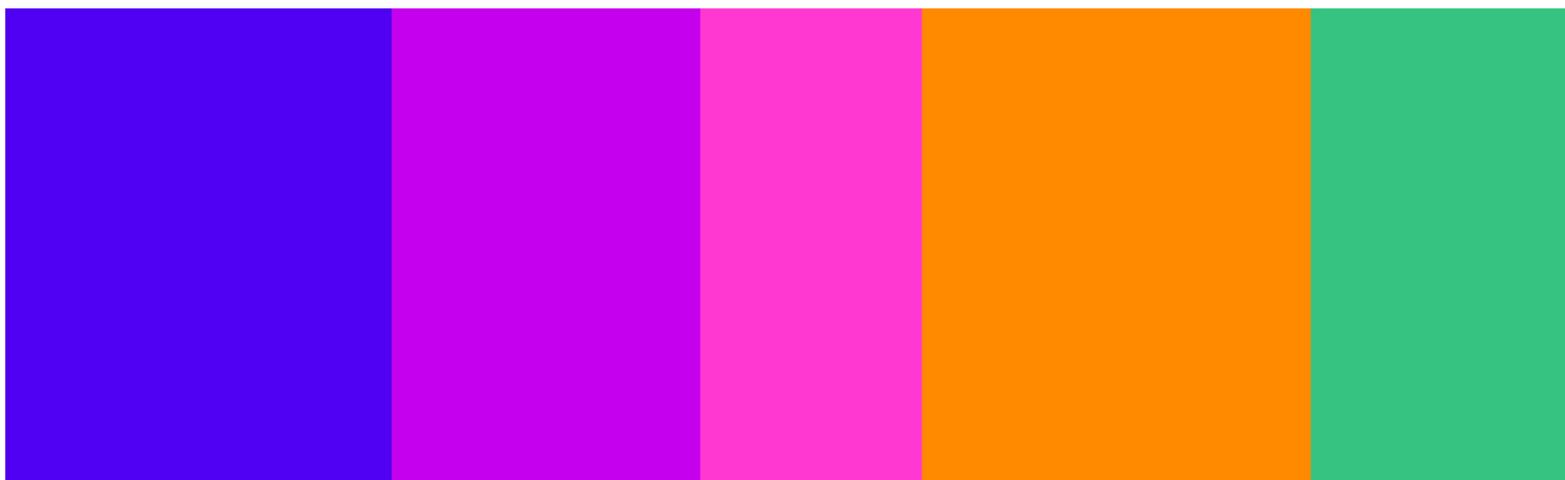


General procedures for investigating breaches of broadcast licences

DRAFT

Procedures

Published 2 December 2024



Section

DRAFT

1. Overview

What do these procedures cover and who do they apply to?

- 1.1 The procedures set out in this document apply to assessments and investigations of potential breaches of most of the conditions which form part of broadcasters' licences. These are referred to in this document as "relevant requirements". These include requirements to:
 - a) broadcast certain types of content and fulfil certain production and programming quotas (usually set out in the licence);
 - b) provide Ofcom with information and/or recordings it has requested;
 - c) pay annual licence fees; and
 - d) comply with Ofcom's codes and rules.
- 1.2 There are other specific procedures for content standards, fairness and privacy, and competition issues. The procedures set out in this document apply to all broadcasters that hold an Ofcom licence and S4C which does not require a licence from Ofcom. There are separate procedures for public service BBC channels and on demand programme services because the law sets out that they are regulated differently.
- 1.3 See Section 2 for full details of what these procedures cover and who they apply to.

How to make a complaint about a broadcaster under these procedures

- 1.4 If you think a broadcaster has failed to meet a relevant requirement, you can complain to Ofcom using our online [complaint form](#). You can also contact us by telephone, text relay, video relay or post. Please include as much detail as you can so that we can assess the matter fully. If your complaint relates to the broadcast of certain types of content, it should be made within 20 working days of the content being broadcast.
- 1.5 See Section 3 for full details of how to make a complaint under these procedures.

How we enforce under these procedures

- 1.6 We open assessments and investigations on our own initiative as well as assess complaints we receive. The procedures are the same in both cases.
- 1.7 Each complaint we receive is firstly assessed to decide whether it raises a substantive issue, related to a relevant requirement. We also consider at this stage and throughout the enforcement process if it is an administrative priority to assess/investigate the issue(s) raised. If we decided to proceed, we will ask the broadcaster for information and, where relevant, recordings of its output. Once we have assessed the issue, we will consider whether there is a case to investigate. We aim to complete an assessment within 15 working days. We usually publish details of cases we have assessed but not pursued to investigation in our [Broadcast and On Demand Bulletin](#).

- 1.8 If we decide to open an investigation, we will inform the broadcaster and usually publish that we have opened an investigation in our [Broadcast and On Demand Bulletin](#). At this stage the broadcaster will usually be invited to make comments (“representations”) about how it considers it has met the relevant requirement(s). In cases where the issue is a measurable fact, we do not seek comments at this stage. Whether or not we have requested comments from the broadcaster, we will prepare a Preliminary View which is Ofcom’s preliminary assessment of whether a breach of the relevant requirement(s) has occurred and why.
- 1.9 This Preliminary View will be provided to the broadcaster and it will have 10 working days to respond. A final Decision will then be made and published in our [Broadcast and On Demand Bulletin](#). We aim to complete investigations within 50 working days.
- 1.10 See Sections 4 and 5 of this document for full details of how we enforce under these procedures.
- 1.11 A simplified high-level summary of our enforcement process is set out in the flow chart below.

DRAFT

ASSESSMENT STAGE



Does the complaint raise potentially substantive issues in relation to a relevant requirement?

No

Yes

Ofcom opens own-initiative assessment

Is this an administrative priority?

No

Yes

Ofcom requests material from the broadcaster

Does the material received demonstrate the broadcaster is meeting the relevant requirement?

Yes

No

Outcome
No further action, outcome usually published in the Broadcast and On Demand Bulletin

INVESTIGATION STAGE

Ofcom opens own-initiative investigation

Ofcom opens an investigation into the broadcaster's compliance

Is the potential breach a matter of measurable fact?

No

Yes

Ofcom sends a formal request for comments as part of the case opening letter

Ofcom sends a case opening letter

Where the breach is a matter of measurable fact, these documents may be sent together

Ofcom prepares a Preliminary View and provides to the broadcaster for comment

Are comments received?

No

Yes

Do the comments and any material previously provided suggest that there is a potential breach?

No

Yes

Do the comments alter Ofcom's Preliminary View that there is a potential breach?

Yes

Are comments received?

No

Yes

No

Ofcom prepares a Decision

Decision provided to broadcaster for information

Outcome
Not in Breach decision, licensee informed and outcome published in the Broadcast and On Demand Bulletin (if investigation is publicised)

Outcome
Outcome published in the Broadcast and On Demand Bulletin

This flowchart is a simplified high-level summary of our enforcement process only, focusing on Ofcom's engagement with complaints and broadcasters. The full procedures, including Ofcom's internal processes, are set out in our General Procedures.

2. Introduction

Ofcom's duties and statutory framework

- 2.1 The main statutes governing broadcasting are the Broadcasting Acts 1990 and 1996 (“the 1990 Act” and “the 1996 Act”) and the Communications Act 2003 (“the 2003 Act”). These statutes impose general duties on Ofcom in relation to broadcasting and provide Ofcom with powers to enable them to fulfil their duties.
- 2.2 Ofcom has a general 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.¹
- 2.3 Ofcom also has more specific duties in relation to, for example:²
- the requirement for certain types of radio station to provide particular content (e.g. news) or to have a particular character;
 - the requirements relating to independent, original and regional programming on public service television services;
 - the requirements in television licences relating to European production and European independent production;
 - the provision of subtitling, signing and audio description on relevant television services; and
 - applying rules restricting those who may hold broadcasting licences.
- 2.4 We carry out our duties by granting licences to certain radio and television broadcasters and including in those licences conditions we think are appropriate to help us carry out our duties.³ These conditions include requirements upon licensees to: broadcast specific programmes and types of content; to provide information to Ofcom to enable us to perform our regulatory functions⁴; to pay fees; and to comply with various codes issued by Ofcom. Examples of relevant codes are listed below.
- 2.5 When carrying out our duties, we are also required to have regard to other relevant duties, including:
- a) the relevant needs and interests of specific groups of persons identified in section 3(4) of the 2003 Act; and
 - b) our public sector equality duties, including advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- 2.6 The specific provisions which empower Ofcom to take enforcement action in relation to a breach of licence conditions will depend upon the type of licence held.⁵

¹ Section 3(2)(c) of the 2003 Act.

² This is not an exhaustive list of Ofcom's specific duties that give rise to relevant requirements to which these General Procedures apply.

³ Sections 4(1)(a) and 87(1)(a) of the 1990 Act.

⁴ 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.

⁵ Relevant statutory provisions include sections 40-42 and 109-111 of the 1990 Act and sections 236-238 and 340-341 of the 2003 Act.

2.7 More generally, section 8 of the 2003 Act requires Ofcom to publish a statement setting out the promptness standards that Ofcom is proposing to meet and have regard to it in carrying out its duties. These procedures are a statement under section 8 of the 2003 Act and Ofcom has regard to them in carrying out its enforcement functions under these procedures.

What these procedures apply to

2.8 These procedures apply to the assessment and/or investigation of possible breaches of licence conditions (with the exception of those handled under the specific procedures listed in the table below). The licence conditions that fall within the scope of the General Procedures are referred to in this document as “relevant requirements”.

2.9 The relevant requirements include, for example, requirements placed upon broadcasters to:

- a) broadcast certain types of content and fulfil certain production and programming quotas (usually set out in the licence);
- b) provide Ofcom with information and/or recordings it has requested;
- c) pay annual licence fees; and
- d) comply with various codes, such as:
 - i) the [Code on Television Access Services](#) (i.e. subtitling, sign language and audio description);
 - ii) the [Code on Sports and Other Listed and Designated Events](#);
 - iii) the [Code on Electronic Programme Guides](#) (in respect of issues relating to prominence of public service channels and access services); and
 - iv) [technical codes](#) for television and radio, for example the Television Technical Performance Code, and analogue and digital radio technical codes.

2.10 There are different procedures for the following matters:

Type of regulatory requirement	Specific procedures and other information
Assessments and investigations about broadcasters’ compliance with content requirements set out in the Ofcom Broadcasting Code and other codes including the Cross-Promotion Code ; the Code on the Scheduling of Television Advertising ; and the Broadcasting Committee of Advertising Practice’s UK Code of Broadcast Advertising .	These cases are handled under the Procedures for investigating breaches of content standards for television and radio .
Assessments and investigations about broadcasters’ compliance with Ofcom Rules on Party Political and Referendum Broadcasts (the “PPRB Rules”).	The cases are handled under the PPRB Rules Procedures .

Type of regulatory requirement	Specific procedures and other information
The consideration and adjudication of Fairness and Privacy complaints in relation to programmes broadcast on television and radio and broadcasters' compliance with Ofcom's "fairness code" under section 107 of the Broadcasting Act 1996.	These cases are handled under the Procedures for the consideration and adjudication of Fairness & Privacy complaints .
Licence conditions and relevant codes to ensure fair and effective competition in the provision of broadcast services.	These cases are handled under the Procedures for investigating breaches of competition-related conditions in Broadcasting Act licences .
The Code on Electronic Programme Guides ("EPGs"), which 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 and (iii) secure fair and effective competition.	Generally, Ofcom will apply the Procedures for investigating breaches of competition-related conditions in Broadcasting Act licences for breaches of (iii), and these General Procedures for breaches of (i) and (ii).

Who do the General Procedures apply to?

- 2.11 These procedures apply to radio or television broadcasters licensed and/or regulated by Ofcom with the exception of BBC UK Public Broadcasting Services and BBC UK Public On Demand Programme Services.⁶ [Separate procedures](#) apply to these services. These procedures do apply to BBC commercial broadcasting companies licensed by Ofcom.
- 2.12 The Welsh Authority (which operates its television service under the name S4C) does not require a licence from Ofcom but is nonetheless subject to certain requirements.⁷ Relevant requirements that the Welsh Authority are subject to include complying with the Code on Television Access Services, independent programme quota requirements, and retaining recordings and producing them to Ofcom. These procedures apply to the Welsh Authority in this context.
- 2.13 These procedures also contain information for individuals or bodies that want to complain about a broadcaster they suspect to have breached relevant requirements.

Status of these procedures

- 2.14 These procedures take effect from [date].
- 2.15 If we consider that it is necessary to depart from these procedures in any material respect in a particular case for reasons of fairness and/or in order for us to properly consider a complaint or carry out an assessment or investigation, we will usually write to the

⁶ Such as BBC iPlayer and BBC Sounds.

⁷ 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.

broadcaster concerned (and any other relevant parties) in advance, setting out the nature/extent of its departure, and our reasons for doing so.

DRAFT

3. Submitting a complaint

How to make a complaint

- 3.1 Complaints under these procedures can be made to Ofcom by any individual or body who considers that a broadcaster has failed to comply with a relevant requirement.

Complaints relating to broadcast content and off-air matters

- 3.2 Complaints relating to broadcast content which fall under these procedures should be made within 20 working days after the broadcast of the relevant content due to the time limits for broadcasters retaining recordings of their output.⁸ Ordinarily, we will not accept a complaint about broadcast output made after this deadline. However, we may consider it appropriate (in the interests of fairness and/or to properly carry out an investigation) to amend or adapt deadlines in a particular case. Any complainant seeking an extension to the 20 working day deadline should explain when they submit the complaint why they believe an extension is appropriate.
- 3.3 We would accept a complaint that relates solely to off-air matters after 20 working days, but these complaints should be made as soon as possible after the matter has been identified.
- 3.4 We request that complaints are submitted on the English or Welsh version of our [complaint form \(Welsh version\)](#). Any complaints submitted in Welsh (on either form) will be treated no less favourably than a complaint submitted in English.
- 3.5 Alternatively, for any complaint you can contact us by telephone on 0300 123 3333 or 020 7981 3040 or on our Welsh language line 0300 123 2023. Deaf or speech-impaired people can contact us via text relay by [downloading the text relay app](#) for smartphones, tablets or computers. You can also contact us in British Sign Language, using our [video relay service](#).
- 3.6 Although it is easier for us to receive complaints online or by phone, complaints can be made in writing to: Broadcast Licensing Team, 2a Riverside House, Southwark Bridge Road, London, SE1 9HA.

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

- 3.7 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.⁹ 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 [submit a complaint via our website](#).

⁸ 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 ITV, STV, UTV, Channel 4, Channel 5, S4C and digital terrestrial television channels for 90 days.

⁹ The contact details of all television broadcasters can be found [on our website](#).

- 3.8 People who are blind or partially-sighted wishing to complain about audio description may wish to use our dedicated email address: adcomplaints@ofcom.org.uk. People with hearing loss and d/Deaf people can contact us via text relay by [downloading the text relay app](#) for smartphones, tablets or computers. You can also contact us in British Sign Language, using our [video relay service](#).
- 3.9 Alternatively, you can contact us via the methods detailed above.

Information to be included in a complaint

- 3.10 All complaints should include sufficient detail about the issue complained of to enable us to assess the issue fully. All complaints should, therefore, include details about:
- what is alleged to have been done, or not done;
 - by which broadcaster;
 - when (i.e. specific date(s) and time(s));
 - where (i.e. how the content was broadcast, e.g. via Freeview or on DAB); and
 - how the issue relates to a relevant requirement.
- 3.11 The complainant's contact details (including full postal address details where appropriate) should also be included.
- 3.12 The inclusion of the above details (or as many of them as possible) is very important. A failure to provide them may mean that we are not able to assess the complaint.

How Ofcom handles your personal information

- 3.13 When assessing a complaint, we will usually:
- only share a summary of the issues raised with the broadcaster; and
 - not share the complainant's name.
- 3.14 We recognise that even where we do not disclose the name of the complainant, disclosing actual wording from a complaint could reveal to the broadcaster the identity of the complainant if, for example, the complaint includes references to their gender or age. We will take this into account when deciding what information to include in the summary of the issues raised.
- 3.15 There may however be some circumstances where we consider it necessary to share the actual wording of the complaint or the name of a complainant. We expect these circumstances to be rare, but they could include where we consider having access to the actual wording of a complaint or the name of a complainant to be necessary for:
- the broadcaster to properly exercise their right of defence (including to fully understand the nature of the complaint and relevant context that we consider necessary to provide us with any relevant information or representations); or
 - for Ofcom to properly assess a complaint and carry out our functions.
- 3.16 This is more likely to be the case where a complaint relates to the treatment of an individual. We may also be required by law to share the actual wording of a complaint or the name of a complainant, for example, where required by a Court or Tribunal in relation to civil or criminal proceedings.
- 3.17 In the rare cases where we consider it necessary to disclose the actual wording of the complaint or the complainant's name to a broadcaster, we will decide what information we

consider is necessary to disclose and will carefully consider the need to disclose against any concerns or objections the complainant may have.

- 3.18 If we consider it necessary to disclose information the complainant considers to be confidential, including their name, we will first explain to the complainant our intention to disclose this information and seek the complainant's consent and/or any objections they may have to our justification for disclosing the information. Where the information is not confidential, we will not seek consent to share this.
- 3.19 In cases where there is a disagreement as to whether the information should be disclosed, we will generally try and resolve the issue with the complainant to agree what can be disclosed. If the complainant continues to object, the complaint (or relevant part of the complaint) would not normally form part of any assessment or investigation. If, however, we remain of the view that we need to disclose the information to carry out our functions, we will give the complainant advance warning before making the disclosure.
- 3.20 The above does not apply to whistleblowers.¹⁰
- 3.21 We use the information complainants provide to enable us to carry out our functions in relation to investigating potential breaches of regulatory requirements under the Broadcasting Act 1990, the Broadcasting Act 1996 and the Communications Act 2003.
- 3.22 We will not hold a complainant's personal data for longer than is necessary for the performance of our functions.
- 3.23 Please see Ofcom's [General Privacy Statement](#) for further information about how Ofcom handles complainants' personal information and their corresponding rights.

Communication with complainants

- 3.24 Ofcom does not generally correspond with complainants following receipt of a complaint under these procedures, other than where we consider it necessary to (a) seek consent to share the complainant's name with the broadcaster; or (b) disclose parts of a complaint that the complainant has indicated are confidential, or where disclosing the actual wording of a complaint to a broadcaster may disclose the complainant's identity (see 'How Ofcom handles your personal information' above).
- 3.25 The outcome of a complaint will be published in our [Broadcast and On Demand Bulletin](#). However, there may be some cases where we consider it would be inappropriate to publicise the matter, for example because the issues raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of). In cases where we do not publish the outcome in our Broadcast and On Demand Bulletin, we will notify the complainant of the outcome directly.

¹⁰ Ofcom is a "prescribed person" under Part IVA of the Employment Rights Act 1996 (as inserted by the Public Interest Disclosure Act 1998) to which "qualifying disclosures" can be made about certain matters, including broadcasting and the provision of television and radio services. Ofcom has published [guidance](#) on how individuals working in the communications sector may contact us if they have concerns about possible wrongdoing at their own organisation (or their former organisation) and where they have been unable to raise or resolve those concerns internally.

- 3.26 Complainants who cannot access the internet can contact Ofcom via the above methods to request the outcome of their complaint. Complainants who require the Broadcast and On Demand Bulletin to be provided in alternative format can contact Ofcom via the above methods, by [contacting our Digital Team using an online form](#), or by emailing accessibilityrequests@ofcom.org.uk.

DRAFT

4. Assessments

Own-initiative assessments

- 4.1 As well as assessing complaints made by others, we may launch assessments on our own initiative (for example, routine monitoring). The procedures in a complaint-led assessment and an Ofcom-initiated assessment are the same.

Assessment process

Initial assessment

- 4.2 Ofcom will first make an initial assessment of the issues raised and consider whether, on its face, the complaint raises potentially substantive issues in relation to a relevant requirement.
- 4.3 If a complaint does not raise potentially substantive issues in relation to a relevant requirement we will decide not to pursue it at this stage. This includes if the matters are outside the remit of these procedures.
- 4.4 We will normally publish our decision not to pursue the matter in our [Broadcast and On Demand Bulletin](#). However, there may be some cases where we consider it would be inappropriate to publicise the matter, for example because the issues raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of).

Administrative priorities

- 4.5 We make decisions about whether to take action on a case-by-case basis, having regard to our duties and all the matters that appear to be relevant. In doing so, we exercise our discretion to target action at cases we think are most likely to incentivise compliance with the relevant requirement(s) and therefore benefit audiences and, where relevant, volunteers and the target community. It is also important that we take action:
- a) in an efficient and effective way;
 - b) that is evidence-based, proportionate, consistent, accountable and transparent; and
 - c) that is targeted only at cases where action is needed. We cannot pursue every possible issue that comes to our attention and must make decisions about whether to pursue cases by weighing up the likely benefits of conducting an assessment or investigation against the resources required, and the comparative benefits of using those resources in other ways.
- 4.6 We will look at the issue(s) complained about to consider whether: (i) the case is an administrative priority for Ofcom; and/or (ii) the evidence we have justifies assessing the issue(s) further having taken into account all relevant factors.
- 4.7 The administrative priority matters we will generally consider, where they are relevant to the case, include:

- a) The risk of harm or seriousness of the alleged conduct. For example:
 - i) the risk to the interests of citizens or consumers, e.g. audiences and, in some cases, volunteers and the target community, resulting from the alleged breach(es) (including whether that risk is immediate or not, and whether it is direct or indirect), and the direct and indirect benefit to citizens and consumers of our taking action (e.g. to deter similar conduct by others);
 - ii) whether the conduct is on-going;
 - iii) whether the allegation concerns conduct that appears to be a repeated, reckless and/or deliberate breach¹¹;
 - iv) whether the broadcaster in question has a history of breaches of the same licence condition, or a demonstrated record of poor compliance more generally. We may also consider previous decisions made under our administrative priorities framework where we decided not to launch an investigation; and
 - v) the risk that the conduct could significantly lessen citizen and consumer trust in the regulatory regime.
- b) The likely impact of addressing the alleged conduct and whether alternative actions are likely to achieve the same ends. For example:
 - i) whether an investigation would help clarify the regulatory or legal framework for stakeholders;
 - ii) whether the issue directly relates to Ofcom's broader strategic goals or priorities (including those within Ofcom's Annual Plan of Work); and/or
 - iii) whether there are other alternative actions that are likely to achieve the same ends or deal with the same issues as continuing the assessment and, if relevant, conducting an investigation.
- c) The resource implications of continuing the assessment and, if relevant, conducting an investigation. For example, what resources (particularly specialist resources) are required, given the need to serve the interests of all parties likely to be affected.

4.8 Where appropriate, we will consider any relevant additional factors.

4.9 We consider our administrative priorities throughout the assessment and investigation process and may decide at a later stage not to pursue a case based on the above factors.

4.10 The above administrative priorities are also taken into account when launching an assessment on our own initiative.

Requesting information and/or content from the broadcaster

4.11 If we consider that we should assess the issue(s) further, we may provide the broadcaster with a summary of the issue(s) raised¹² and ask the broadcaster for information to assist our consideration of the issue(s), and/or – in cases relating to the output of a broadcast service –

¹¹ We would, for example, consider whether there is evidence that the alleged breach occurred as a result of matters outside of the broadcaster's control or whether the broadcaster notified us of an issue in advance of any complaint being made.

¹² Where a summary will not provide the broadcaster with enough information to comment properly, we may share a non-confidential version of the complaint submission with the broadcaster for comment. As a general rule, we will not share the identity of the complainant with the broadcaster unless, in Ofcom's view, we consider it is necessary to do so to enable the broadcaster to exercise their rights of defence. More information about this is set out in Section 3.

recordings of the relevant output, which must be provided within five working days.¹³ However, we may consider it appropriate (in the interests of fairness and/or properly to carry out an assessment, or in cases of potential significant harm) to amend or adapt the time limits in a particular case, including expediting the time frames. Any broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.

Outcomes of assessments

- 4.12 Based on an initial assessment of the issue(s), our administrative priorities, and a review of any relevant broadcast output, we will consider whether the broadcaster appears to be meeting the relevant requirement(s) and, if not, whether to open an investigation into its compliance. We aim to complete our assessment within 15 working days but the length of time that this takes will vary on a case-by-case bases depending on the issue(s) under consideration.
- 4.13 We will decide to either not pursue the matter any further or to open an investigation into the broadcaster's compliance.
- 4.14 Where we decide not to investigate further, we will normally publish our decision not to pursue the matter in our [Broadcast and On Demand Bulletin](#). However, there may be some cases where we consider it would be inappropriate to publicise the matter, for example because the issues raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of).
- 4.15 If we have contacted the broadcaster for information or recordings of its output to assist in the assessment of the issue, we will notify the broadcaster of our decision before it is published.
- 4.16 Where we decide to open an investigation into a broadcaster's compliance with a particular relevant requirement we will follow the process set out in Section 5 of these procedures.

¹³ 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. It is also a condition of all broadcast licences that a licensee must provide information that Ofcom may require to exercise its functions.

5. Investigations

Opening an investigation

- 5.1 We may launch investigations on our own initiative (for example, due to non-payment of annual licence fees or non-provision of information) without completing an assessment, as well as investigating following an assessment (detailed in Section 4 of these procedures). The procedures in a complaint-led investigation and an Ofcom-initiated investigation are the same.
- 5.2 Where we decide to open an investigation into a broadcaster's compliance with a particular relevant requirement, we will generally inform the broadcaster by sending it a case opening letter explaining the scope of our investigation (i.e. the particular relevant requirement(s) which we consider is/are relevant and applicable to the issue(s) concerned).
- 5.3 Shortly after sending the case opening letter, we will normally publish details of the issue(s) under investigation in our [Broadcast and On Demand Bulletin](#). However, there may be some cases where we consider that it would be inappropriate to publicise the matter(s) at this stage, for example because the issue(s) raised are particularly sensitive and/or publicity could have a detrimental impact on third parties (although there may be exceptional cases where we do publish in such circumstances, such as where there is a high level of public interest in the matter complained of). In such cases, we may delay publicising the investigation until it has concluded or may decide not to publicise such cases at all.
- 5.4 We aim to complete those cases that we take forward for investigation within 50 working days, but the length of time that this takes will vary on a case-by-case basis depending on the issue(s) under consideration.

Requesting comments (“representations”)

- 5.5 Other than in cases falling within paragraph 5.6, when we send the broadcaster the case opening letter, we will invite the broadcaster to make representations in response (and to provide any relevant material/evidence in support) within 10 working days. The broadcaster should keep to this time limit. However, we may consider it appropriate (in the interests of fairness and/or properly to carry out an investigation, or in cases of significant potential harm) to amend or adapt the time limit in a particular case, including expediting the time frames. Any broadcaster seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.
- 5.6 There may be specific cases where the issues raised, on the facts, mean that we do not consider it necessary to seek representations or any further information from the broadcaster at this stage. This will normally be where the breach of a relevant requirement is a matter of measurable fact (for example, relating to whether a broadcaster has paid licence fees or provided information to Ofcom). There may also be other specific cases where the issues raised mean this approach is appropriate. In these cases, we will not usually seek the broadcaster's representations at this stage. Instead, we will write to the broadcaster with our Preliminary View on the substance of the issue(s) at the same time as, or shortly after, sending our case opening letter.

Third party representations

- 5.7 We recognise that there may be individuals/bodies who may be directly affected by the outcome of an investigation and determination of a broadcaster's compliance with a relevant requirement 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 individuals/bodies in their submissions in response to our request for representations on the issues raised and confirm to us that they have done so.
- 5.8 However, such individuals/bodies may make representations on their own behalf direct to Ofcom in respect of a matter which we proceed to investigate. In such a case, individuals/bodies should seek to make representations to us as early in an investigation of a complaint as possible, setting out if/to what extent their representations differ from those of the broadcaster. We will, as appropriate, take those representations into account and include those individuals/bodies in our decision-making process under these procedures.

Preparation of Ofcom's Preliminary View

- 5.9 We will prepare our Preliminary View as to whether the broadcaster is in breach of the relevant requirement(s). This Preliminary View is provisional and may be subject to change in the light of subsequent representations/material provided by the broadcaster and any relevant third party (if applicable), as explained below.
- 5.10 If we consider that it is necessary to obtain further information – in addition to any information and/or representations the broadcaster has already provided – to ensure that we can fairly and properly prepare our Preliminary View, we will seek such information before preparing that View.
- 5.11 The decision to issue a Preliminary View will be taken by a senior Ofcom colleague with appropriate Board-delegated authority. Typically, this would be the person who is responsible for overseeing the investigation. Where we consider that it would be appropriate, we will also provide a draft Preliminary View to a panel of Ofcom's Content Board members¹⁴ for their advisory opinion before finalising our Preliminary View.
- 5.12 The Preliminary View will contain:
- a summary of the issue(s) and, if relevant, any complaint(s);
 - a summary of any broadcast output, if relevant;
 - the relevant requirement(s) we are investigating;
 - any representations made by the broadcaster (and any relevant third party) during the assessment and investigation; and
 - our preliminary assessment of whether a breach of the relevant requirement(s) has occurred and why.
- 5.13 If at Preliminary View stage, we consider that there has not been a breach of the relevant requirement(s), we will usually be able to reach our Decision without seeking further representations from the broadcaster.

¹⁴ [The Content Board](#) is a committee of the main Ofcom Board established by the Communications Act 2003. It includes members with extensive broadcasting experience.

Representations on Ofcom's Preliminary View

- 5.14 When we have prepared our Preliminary View, we will provide it to the broadcaster (and any relevant third party).
- 5.15 The broadcaster (and any relevant third party) will have the opportunity to make written representations on our Preliminary View within 10 working days. The broadcaster (and any relevant third party) should keep to this time limit. However, we may consider it appropriate (in the interests of fairness and/or properly to carry out an investigation, or in cases of potential significant harm) to amend or adapt the time limit in a particular case, including expediting the time frames. Any broadcaster (or relevant third party) seeking an extension to a time limit should explain in writing to Ofcom why it believes it is appropriate.
- 5.16 We consider that we will normally be able to reach our final Decision fairly and properly following written representations and without oral representations from the broadcaster. However, there may be some cases where, in view of the nature of the breach under consideration and the complexity of the issues raised, we consider it appropriate to give the broadcaster the opportunity to make its representations orally to us, following the submission of any written representations to us. We will inform the broadcaster if we consider that it is appropriate to offer the broadcaster the opportunity to make oral representations in a particular case.¹⁵
- 5.17 In any event, a broadcaster may, in any particular case, make a written request to make its representations orally to Ofcom in addition to any written representations. We will agree to such a request if we consider that an oral hearing is appropriate in view of the nature of the breach(es) under consideration and the complexity of the issue(s) raised.

The Decision

- 5.18 Once we have received and considered the broadcaster's representations (if any) on our Preliminary View and/or any representations from a relevant third party, we will reach our final decision (i.e. whether or not to record a breach(es) of a licence or other relevant requirement(s)) ("the Decision").
- 5.19 Where a panel of Content Board members has provided an advisory opinion on the Preliminary View in a particular case, generally the draft Decision would be provided to a panel of Ofcom's Content Board members (who have not been involved in the investigation or the Preliminary View) for their advisory opinion before a final decision is taken.
- 5.20 The Decision will be taken by a senior Ofcom colleague with appropriate Board-delegated authority, who will not have been involved in the investigation and/or the preparation of the Preliminary View.
- 5.21 A Decision will usually involve one of the following three outcomes:
- Breach: the broadcaster has breached the relevant requirement(s);
 - Resolved: we consider the matter resolved; and/or
 - Not in Breach: the broadcaster has not breached the relevant requirement(s).
- 5.22 In our Decision, we will make it clear if we intend to take any further action following the conclusion of the investigation. This will have been decided by the same colleague with

¹⁵ The final decision maker would chair any oral hearing.

appropriate Board-delegated authority to make the Decision. The further action may include (but is not limited to):

- a) monitoring the service to ensure that the broadcaster is complying with the relevant requirement(s);
- b) requesting that the broadcaster attends a meeting with Ofcom to discuss its approach to compliance;
- c) issuing a direction; and/or
- d) considering the breach(es) for the imposition of a statutory sanction.

5.23 We set out more detail about the above potential actions in Section 6.

Publication of the Decision

5.24 Where we have found that a broadcaster has breached a relevant requirement(s), we will usually publish our Decision in our [Broadcast and On Demand Bulletin](#) and/or in the relevant broadcast licensing section of the Ofcom website. We will normally publish all breach and resolved Decisions, even where we have not previously publicised details of the issue(s) under investigation because it would have been inappropriate to publicise the matter when we opened the investigation.

5.25 We will provide the broadcaster, for information only, with an embargoed copy of the Decision one working day before publication.

5.26 We will also normally publish information in our [Broadcast and On Demand Bulletin](#) to indicate that we have found that the broadcaster has not breached a relevant requirement(s), but do not usually set out the reasons for this publicly. Where we have not published details of the issue(s) under investigation we would not normally publish a “not in breach” decision at the conclusion of the investigation.

5.27 Where we have published the fact that we have opened an investigation which we subsequently discontinue, we will publish the fact that we have discontinued the investigation in our [Broadcast and On Demand Bulletin](#).

Disclosure of information by broadcasters and Ofcom

5.28 It is an essential part of the integrity of our processes and our ability to regulate fairly that all parties concerned cooperate with our published rules and procedures and respect the confidentiality of investigations. Parties (complainants, broadcasters, Ofcom and any directly affected third parties) may, unless otherwise indicated, make public the fact that a complaint has been made or that Ofcom is assessing or investigating a case. They may also use any information which is already in the public domain.

5.29 Any correspondence, documents or other material concerning the complaint/matter during the course of the assessment/investigation are however considered confidential until published by Ofcom. Any disclosure of this information before it has been published by Ofcom may result in a claim by a third party for a breach of the common law of confidence or data protection legislation.

5.30 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). Information provided to Ofcom as part of a complaint may need to be disclosed by Ofcom in order to meet such obligations.

- 5.31 Ofcom may (in assessing/investigating and publishing its decision) 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.

DRAFT

6. Further action following an investigation

- 6.1 We set out below some of the further action we may take following a breach or resolved decision. This is not an exhaustive list of every action we may take.

Monitoring

- 6.2 Ofcom may decide to monitor the service to ensure that the broadcaster is complying with the relevant requirement(s) that were the subject of the Decision. We will request recordings and information from the broadcaster to carry out this monitoring. This will follow the assessment process set out in Section 4.

Compliance meeting

- 6.3 We may request that a broadcaster attends a meeting with Ofcom to discuss in detail the relevant requirement(s) that the broadcaster was found to have breached and the broadcaster's approach to compliance. However, it is important to note that Ofcom cannot provide compliance advice to broadcasters.

Sanctions

Directions

- 6.4 Ofcom has the power under the Broadcasting Acts¹⁶ and 2003 Act¹⁷ to issue a direction pursuant to a broadcaster's licence.
- 6.5 We may issue such a direction in any case we consider appropriate. This may include, for example, cases in which, in our view:
- the broadcaster has committed a serious breach of a relevant code or rule, but in which Ofcom does not think that the breach justifies consideration of a further sanction against the broadcaster under our sanctions procedures as set out below;
 - a broadcaster has failed to comply in a timely manner with any relevant requirement; and/or
 - there are other reasons which make the taking of a specific step by a broadcaster appropriate.
- 6.6 A Notice of Direction will normally be published in our [Broadcast and On Demand Bulletin](#).
- 6.7 Failure by a broadcaster to comply with a direction issued by Ofcom can lead to the consideration of a further statutory sanction against the broadcaster. In such cases, the sanctions procedures referred to below would apply.

¹⁶ See, for example, sections 4(2) and 87(2) of the 1990 Act.

¹⁷ See, for example, sections 236 and 340 of the 2003 Act

Further sanctions

- 6.8 Where we decide that there has been a breach (or breaches) of a relevant requirement, we may consider that it justifies consideration of a statutory sanction against the broadcaster. If so, our [Procedures for the consideration of statutory sanctions in breaches of broadcast licences](#) will apply.
- 6.9 The types of sanction we can impose include issuing a direction, imposing a financial penalty, shortening or suspending a licence (in certain cases), and revoking a licence.

DRAFT