

RadioCentre response to Ofcom's review of procedures for handling broadcasting complaints, investigations and sanctions.

Background

1. RadioCentre is the industry body for commercial radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), its members consist of the overwhelming majority of UK commercial radio stations, who fund the organisation.
2. The role of RadioCentre is to maintain and build a strong and successful commercial radio industry - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing commercial radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

Overview

3. Ofcom is currently conducting three separate but related consultations (which all close on 11 February 2011). These reviews consider different elements of Ofcom's complaints process and all have some bearing on the activity of RadioCentre members.
 - i) *The review of procedures for handling broadcasting complaints, investigations and sanctions.*
 - ii) *Dispute resolution guidelines – Ofcom's guidelines for the handling of regulatory disputes.*
 - iii) *Revising the penalty guidelines.*
4. 'The review of procedures for handling broadcasting complaints' is the most pertinent to RadioCentre's members. Therefore this response focuses largely on this consultation and the proposals relating to handling broadcasting complaints. However, the themes from all three consultations are closely related, and this response also includes some comments that relate to dispute resolution and the penalty guidelines.
5. In summary RadioCentre welcomes Ofcom's attempts to make the process for handling complaints *'as effective and efficient as possible'*¹. Nevertheless, while we are keen to see a more streamlined system in place and understand the need to streamline processes in the current economic climate, we clearly do not want to see this as the expense of good judgement in the complaints process.
6. It is our view that a constructive, open and honest dialogue between the regulator and broadcasters is beneficial for all stakeholders in the complaints process, including the complainant.

The review of procedures for handling broadcasting complaints, investigations and sanctions

An 'issues based' model of dealing with complaints

7. RadioCentre understands Ofcom's reasons for moving towards an "issues based" model for ensuring compliance with relevant requirements. We acknowledge that dealing with clusters of complaints should make the process more efficient. However, we seek assurances that priority will not be given simply to the cases with the largest *number* of complaints made about a particular broadcast.
8. It should remain an intrinsic part of Ofcom's complaints process that the decision over whether the broadcaster is in breach is not related to the number of complaints but to the

¹ Ofcom, 'Review of procedures for handling broadcasting complaints, investigations and sanctions', Dec 2010, para 1.6

seriousness of the issue as measured against Ofcom's own criteria. Therefore we welcome the commitment by Ofcom to continue to *'investigate where necessary and prioritise our investigations according to a number of relevant factors (i.e. harm to minors, financial detriment, ongoing harm)*².

9. Moreover we are aware that Ofcom has previously acknowledged and taken into account complaints that are partly a result of an orchestrated campaign³ and would urge it to continue to do so in future.

Introduction of the 'Preliminary View' - The removal of the internal review mechanism and the Broadcasting Sanctions Committee

10. Two points have been made consistently by our members in regard Ofcom's complaints process; i) the process can take too long ii) on occasion there is not enough communication between Ofcom and the broadcaster from the moment the complaint is made until Ofcom publishes its verdict. With these points in mind, RadioCentre welcomes Ofcom's proposal to introduce a 'Preliminary View' of its findings during an investigation into a broadcasting complaint. It seems logical that allowing broadcasters an earlier insight into what decision Ofcom intends to make should both speed up the process and improve communication between Ofcom and the broadcaster.
11. While we welcome the preliminary view in principle, we believe that this process will only be fair and effective if Ofcom is able to take the response of the broadcasters fully into consideration and is willing to consider altering its position significantly as a result.
12. RadioCentre would also ask whether there will be any opportunity for broadcasters to respond less formally to the preliminary view without having to make a full representation. We believe that such an approach would offer an opportunity for issues to be addressed more efficiently and effectively without always having to revert to the more formal process.
13. Given the introduction of the preliminary view, Ofcom has asserted that there is no longer a requirement for either the internal review mechanism or the Broadcasting Sanctions Committee. RadioCentre is not necessarily wedded to the retention of either process and we accept that removing them may go some way to increasing the time frame under which complaints are processed. However, while we welcome any attempt to improve the speed of the process, we do not want this to compromise, in any way, the rigour of the investigation. Therefore, greater clarity regarding the responsibility of Ofcom officials and the preliminary view process would be welcome.

Representations in a Fairness & Privacy complaint

14. In the case of Ofcom's procedures for the investigation of Fairness and Privacy complaints it is proposed that the broadcaster has 15 working days in which to provide a statement to Ofcom in response. This is a reduction from the 20 working days currently available.
15. Although we approve of any attempt to improve the speed of this process and accept that this change may well help to do that, we are concerned that this change would greatly increase the pressure on broadcasters. For RadioCentre to support this move in principle we would have to have clear evidence that Ofcom are prepared to significantly increase the speed of their work to reflect the increased workload placed on broadcasters. At this stage, there is no evidence to suggest that this will be the case.

Communication with broadcasters

16. As noted above, we believe that a completely open dialogue between Ofcom and broadcasters underpins an effective complaints procedure. We see no benefit in any information being withheld by either party at any stage in the process.

² Ofcom, 'Review of procedures for handling broadcasting complaints, investigations and sanctions', Dec 2010, para 2.17

³ Steve Sutherland, Galaxy Birmingham, 29 November 2008 (not in breach), Ofcom Broadcast Bulletin Issue number 126, 26 January 2009

17. Therefore, although we understand that the proposed preliminary view should improve the communication between Ofcom and the broadcaster, we would like to be sure that this approach applies similarly to the rest of the process. This must start with when the regulator first asks for the audio of the relevant programme.
18. It is not clear from the proposals whether Ofcom is committed to providing a synopsis of the complaint at the time of asking for the recording in all cases. We believe that Ofcom should do this as a matter of course, and indeed does do so in many cases. Clearly, simply requesting a recording of the 'suspect' audio will not necessarily provide enough context for the investigation. Such context is important as it could reveal the complaint to be spurious and therefore prevent Ofcom wasting valuable time and resources. Perhaps more significantly, by not informing the broadcaster of the full details of a complaint, there is the risk that the broadcaster could, inadvertently, repeat the mistake and compound any listener harm.
19. By withholding information from the broadcaster about the nature of a complaint, Ofcom also risks creating an unnecessarily difficult or stressful situation for that broadcaster and its staff. In particular we note below the enormous strain that can be placed on staff when investigations stretch over a long period of time, and urge Ofcom to consider how a more open dialogue with broadcasters at the outset of a complaint could mitigate a similar burden.
20. In regard to the 'Publication of the Decision' for breaches of broadcast licences and Fairness & Privacy complaints, Ofcom proposes that the '*Decision will be published in Ofcom's Broadcast Bulletin on its website*⁴'. We would seek a guarantee that the broadcaster is informed of the decision prior to it being published on Ofcom's website.
21. In addition, Ofcom does not feel there are enough grounds to proceed with a complaint we believe that the broadcaster should be informed as soon as possible. We are aware of some cases where a complaint was made 9 months ago, yet the broadcaster has not been informed whether a complaint has been rejected, is under consideration or about to be upheld. This uncertainty and lack of clarity is unhelpful for broadcasters.

Time limits for broadcasting complaints

22. Within the proposals for broadcasting complaints, there are no suggested changes to the actual time limits. We believe that this is an omission considering the fact that one of the central goals of this review is to increase the speed of the process overall.
23. In the last review of the complaints procedure Ofcom (in June 2009) was quite specific in stating that it anticipated completing 80% of straightforward standards complaints within 30 working days and of straightforward Fairness and Privacy complaints within 50 working days. It also anticipated completing 80% of complex standards cases within 60 working days and of complex Fairness and Privacy cases within 130 working days.
24. In our response to this previous review we stated our belief that the 80% threshold is too low and we raised the concern that the threshold was not assessed over any given period.
25. In light of the significant procedural changes proposed in the review, we would expect that the length of time Ofcom takes in processing a complaint should at least be reviewed. We would repeat our view that Ofcom should seek to increase the speed of the process to ensure that at least 90% of cases (assessed on an annual basis) meet the timelines outlined above.
26. We should also point out that a number of our members have outlined the stress caused to staff, both emotionally and in workload, by drawn-out complaints. One member cites a case which lasted 15 months, which made it very difficult for the station in question to carry on with business as usual.

⁴ Ofcom, 'Review of procedures for handling broadcasting complaints, investigations and sanctions', Dec 2010, para 3.19

Conclusion

27. RadioCentre welcomes Ofcom's review of its complaints process. Our main concern is that the process is rigorous while ensuring it is as fair, efficient and effective as possible.
28. Indeed we would extend this approach to the parallel consultations that are being conducted on related matters, including Ofcom's proposals relating to the penalty charges. While we are not responding in detail to these further consultations we welcome any attempt to make the guidelines clearer. That said, we do have some concern over the way in which deterrence will be seen as central to setting the level of penalties, and what this will mean in practice. Therefore we ask Ofcom to clarify i) whether it expects this to lead to an increase in the number of penalty charges ii) whether the average amount levied as a penalty would increase.
29. Nevertheless our key concerns are clearly related more to the procedures for handling broadcasting complaints, investigations and sanctions. Therefore we look forward to working with Ofcom to adapt this process in a manner that enables efficiencies, but retains a balance of fairness and effectiveness.

RadioCentre, February 2011

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