

**RADIOCENTRE RESPONSE TO OFCOM CONSULTATION ON
GENERAL PROCEDURES FOR INVESTIGATING BREACHES OF BROADCAST LICENCES**

INTRODUCTION

1. RadioCentre is the industry body for commercial radio. Founded in 2006 after the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre represents radio groups and stations from rural, small scale ventures, to household names serving major metropolitan areas. Its member shareholders together represent over 98% of commercial radio listening in the UK.
2. This response deals with the specific points raised in the consultation document, in terms of the process for managing licence breaches under the current framework. However, RadioCentre is also on record as highlighting its opposition to the continuing use of format requirements and local production quotas¹. Therefore, while seeking to engage constructively on the matter at hand, this response should not be read as an endorsement of regulatory structure itself and some of the requirements therein.
3. While we are generally supportive of a transparent and effective compliance framework and the introduction of General Procedures, we use this response to highlight a number of concerns regarding the premature publication of information and need for flexibility regarding the provision of recordings.

KEY CHANGES

- **General Procedures**

4. Overall the proposal to publish General Procedures for investigating breaches of broadcast licences is a welcome development. If managed correctly it will help to ensure that there is clear and transparent framework in place for the management of such breaches. This is in the interests of citizens and consumers (in line with Ofcom's statutory obligations), but also helpful to broadcasters and to Ofcom itself.
5. RadioCentre appreciates the clear difference between this process and the parallel arrangements for breaches of content standards²; Fairness and Privacy complaints³; and competition and regulatory complaints⁴. However, we would urge Ofcom to ensure that this difference is clearly expressed within all of the procedures and that the distinction is explained as simply and prominently as possible on the sections of Ofcom's website dedicated to complaints and licence breaches. This should include examples of the types of complaint or breach (e.g. that the General Procedures might include investigations regarding format and local news requirements), as well as a clear explanation of the process followed in each case.

- **Initial assessment stage**

6. The establishment of an initial assessment stage on receipt of a complaint, which will usually be completed within 15 working days, is a sensible step in the process. Within this it is also reasonable

¹ http://www.radiocentre.org/files/rc_response_to_comms_review_2012_final_draft_submitted.pdf

² <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

³ <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>

⁴ http://stakeholders.ofcom.org.uk/binaries/consultations/draft-enforcement-guidelines/annexes/Enforcement_guidelines.pdf

(and a condition of broadcast licences) for recordings to be available and provided at Ofcom's request 'forthwith'. However we question whether a fixed period 5 working days is a reasonable period. This is addressed in more detail below.

- **Publication of complaints assessed but not pursued**

7. It is difficult to see any real benefit from publishing a list of complaints that have been through the initial assessment stage but are not being pursued. By definition such complaints are groundless, as they have not even been deemed worthy of being pursued in an investigation by Ofcom. In these circumstances it is only necessary to notify the complainant and the broadcaster, which should be done promptly and privately with the parties involved.

8. Therefore **RadioCentre proposes that Ofcom amends its draft General Procedures by removing the phrase 'we will publish the decision in a relevant location on our website' from para A1.25.**

- **Publication of cases being investigated**

9. Similarly there is no case for publishing details of all cases being investigated by Ofcom. Even with the caveat that 'an investigation by Ofcom does not necessarily mean that the broadcaster has done anything wrong' (para 2.11), the very fact that such investigations are known to be occurring will fuel speculation, which could be damaging for a broadcaster. Ofcom's Broadcast Bulletin is already used extensively as a source for media stories. This may be understandable where the outcome of a complaint has been determined, but is not appropriate during an investigation.

10. Clearly the investigation and complaints process must be transparent and accountable, however such matters must also be handled sensitively and not be open to abuse or malicious complaints. As such, **while there is an appropriate time the details of Ofcom's investigations to be published, this must not be while an investigation is ongoing.**

- **Publication of all decisions following investigation**

11. It is entirely appropriate for Ofcom's decisions to be published once its investigations are concluded, and for the reasons for such decisions to be outlined. Moreover, it is understandable that the level of detail provided may vary according to the degree of clarification required in regulatory matters or due to the level of public interest.

12. This is materially different to Ofcom publishing details of complaints that are ongoing, or have been assessed and are not strong enough to merit formal investigation. As noted above, this does nothing to assist with compliance with licence conditions and could actually have serious unintended consequences for broadcasters who have done nothing wrong, due to the potential for adverse publicity and speculation.

- **Standardise time for provision of recordings to five working days**

13. A number of radio groups have expressed their concern to RadioCentre that standardising the length of time for the provision of recordings to 5 working days is likely to be problematic.

14. Many radio stations are small businesses with a limited number of staff and a broad range of commitments. Therefore, even the initial request from Ofcom for recordings may sometimes take

several days to reach the appropriate person at the station for processing (longer still where individuals are absent or on annual leave).

15. In addition, broadcasters are often required to provide several days worth of audio recordings. This can take a significant amount of time to download, check and (in some cases) be sent from a regional station to a central point or hub for processing and delivery to Ofcom.
16. While commercial radio stations appreciate the need to deal with complaints or breaches as swiftly as possible, RadioCentre would ask Ofcom to consider the competing demands on stations. **Therefore, as a minimum it should confirm that there will be flexibility on this timeframe depending on individual circumstances and the volume and nature of the request, and ideally the timeframe for providing recordings should be 10 working days in such cases.**

- **Introduction of KPIs**

17. We welcome the introduction of KPIs to measure Ofcom's performance against the timescales for assessment of complaints and the completion of investigations.

OTHER ISSUES RAISED

18. A number of RadioCentre members have requested that Ofcom do more to provide a simple and clear summary explanation of the process for dealing with complaints and licence breaches under each of the various compliance codes.
19. At the very least this should include guidance on the timings; which committees and executive teams within Ofcom would be expected to handle the issue (and how they can be contacted); opportunities for licensees to provide further evidence; and details of any appeal process. In addition, where licensees in the Nations are affected, Ofcom should seek input from its Advisory Committees as a matter of course.

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