

Review of procedures for handling broadcast complaints, cases and sanctions

RadioCentre response to Ofcom consultation

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. We welcome Ofcom's review of its procedures for handling standards cases, fairness and privacy complaints, and sanctions. We agree with many of the changes Ofcom proposes and therefore restrict this submission to those areas where we disagree with Ofcom or have concerns about what is proposed.
4. In particular, we welcome the consistency which Ofcom proposed introducing between its standards and fairness and privacy processes. In addition, we believe that the consistent language used to describe how the process unfolds will enable complainants and broadcasters to facilitate successful and speedy resolution of complaints.
5. It is our view that a constructive, open and honest dialogue between regulator and broadcaster is beneficial for all stakeholders in the complaints process, including the complainant.

Broadcaster-first

6. We believe Ofcom has missed an opportunity to review the importance of requiring broadcasters to take primary responsibility for handling complaints. The rationale for a broadcaster-first complaints system is well understood and indeed the consultation document states that Ofcom encourages complainants to complain to the relevant broadcaster in the first instance.¹
7. However, we think the time is now right for Ofcom to require complainants to complain to the broadcaster first.
8. This is the system used by the BBC, whereby complainants have to complain first to the relevant member of the editorial team, and then must give the respondent a second opportunity to address the complaint before referring the complaint to the Editorial Complaints Unit and, if still dissatisfied, finally taking up the matter with the BBC Trust.
9. We believe a similar system should be introduced for commercial broadcasters, whereby the broadcaster has two attempts at addressing the complainant's concerns before Ofcom becomes involved.
10. If Ofcom decides, however, to retain the current system, we believe it should be much more proactive in encouraging complainants to address their complaint first to the

¹ Pg 15, para 21

broadcaster. We would welcome the opportunity to discuss with Ofcom what systems are currently in place and how these could be improved.

11. We are also concerned by Ofcom's expectation that broadcasters should "retain the relevant recordings and any related material for the periods required by statute *from the date on which the broadcaster may reasonably expect the complainant to have received the broadcaster's final determination*"² (emphasis added)
12. We believe this requirement is likely to create an unsustainable burden for some broadcasters. We believe the existing requirement to retain recordings for 42 days is sufficient.

Publishing details of on-going investigations

13. We are concerned not just by the proposal to publish details of on-going investigations, but the manner in which this significant proposal is presented within the consultation document.
14. We believe that this represents a material change to existing practices and that it should have been prominently flagged as such, both within the body of the consultation and within the executive summary.
15. Furthermore, Ofcom has presented no rationale as to why publishing details of on-going investigations is desirable.
16. We believe that the contrary is actually true and that implementing this practice will have important negative consequences: principally it will undermine public trust in broadcasters. Trust is arguably already at a low ebb and we believe this will be compounded by the on-going publication of incomplete information.
17. There is a genuine risk that broadcasters will, in public at least, be guilty by accusation, and that even if a complaint is subsequently rejected, the damage will have been done. This is potentially most serious for commercial broadcasters whose relationships with advertisers could be damaged, even when the broadcaster has done nothing wrong.
18. We therefore urge Ofcom to abandon this proposal.

Inviting representations from affected third parties

19. Above we expressed concern about the lack of proper attention drawn by Ofcom to the significant new proposal to publish details of on-going investigations. We are similarly concerned that a significant new proposal to invite representations from affected third parties is given insufficient priority within the consultation document.
20. Again, we are also concerned that a significant new proposal has been introduced without any apparent evidence presented as to its necessity.
21. We believe this new practice is inappropriate and risks confusing investigations. It is also likely to create additional and unnecessary work for Ofcom and broadcasters.
22. We are particularly concerned that it potentially requires Ofcom to act as a mediator between various parties 'affected' by a complaint, rather than focusing on the key matter in hand: resolving the dispute between complainant and broadcaster.
23. We also suggest that, by inviting third parties into the process, Ofcom is further undermining confidence in broadcasters, particularly if the third party is used to 'test' the veracity of the broadcaster's testimony in replying to the complaint.

Communication between Ofcom and broadcasters

24. As we noted above, we believe that an absolutely 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 Pg 16, para 26

25. We therefore disagree with Ofcom's proposal that broadcasters should not make written comments on a complaint at the earliest stage of an investigation³. We believe that such early comments can be valuable and our members would wish to retain the opportunity (if not the obligation) to make them.
26. Similarly, we disagree that a broadcaster should only be informed of the full details of a complaint if Ofcom decides to move to a full investigation⁴. We believe that Ofcom should provide a synopsis of the complaint at the time of asking for the recording; simply requesting a recording of the 'suspect' audio will not 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.
27. We also believe that broadcasters should be told if Ofcom decides not to take a complaint further.
28. By withholding information from the broadcaster about the nature of a complaint, Ofcom is also likely to create an unnecessarily stressful situation for staff within the broadcaster. 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.

"Person-affected" fairness & privacy complaints

29. We note that Ofcom states that only a "person affected"⁵ may make a fairness and privacy complaint. However, we are aware that, in at least one previous case⁶ Ofcom adjudicated a breach of privacy despite no such person having complained. We believe that in any future such cases, Ofcom should not act without a relevant complaint.

Time limits

30. Ofcom states that it anticipates completing 80% of straightforward standards complaints within 30 working days and of straightforward F&P complaints within 50 working days. It anticipates completing 80% of complex standards cases within 60 working days and of complex F&P cases within 130 working days.
31. We believe that the 80% threshold is too low. Furthermore there is no indication over what period, or what number of cases, the threshold will be assessed.
32. Many 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.
33. Ofcom should ensure that at least 90% of cases (assessed on an annual basis) meet the timelines outlined above.
34. We also suggest that, where a broadcaster agrees with Ofcom that it is 'in breach' there should be a fast-track procedure to resolve the complaint, which is able to lead to a swift conclusion. At present we understand that some cases, which have notionally been identified as resolvable under such a procedure, have still taken over a year to conclude.

Anonymous complaints

35. Ofcom says it will not "usually"⁷ consider anonymous complaints. We believe Ofcom should not ever consider anonymous complaints.

³ pg 16 para 27

⁴ pg 17 para 31

⁵ Pg 22, para 17

⁶ Ross/Brand

⁷ Pg 16, para 24

36. However, we respect that some complainants may prefer to have their identity kept confidential. In such cases, we believe Ofcom must fully explore the authenticity of the complainant's identity and integrity of their motive in complaining.

Review process

37. We note an inconsistency between the standards and F&P processes for requesting a review of an adjudication and request that this is resolved.

RadioCentre, August 2009

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