

Protocol for communication between the BBC and Ofcom in cases which fall under the BBC's procedures for (1) self-initiated investigations of potential breaches of editorial standards and (2) fast-tracked cases

Introduction and BBC complaints framework

1. Under the BBC's Royal Charter and Agreement,¹ the BBC is required to set and publish procedures for the handling and resolution of complaints, having consulted Ofcom and the public (the "BBC Complaints Framework").²
2. Ofcom has its own procedures for the investigation of complaints about the BBC's compliance with the content standards set under section 319 of the Communications Act 2003 and the BBC Charter and Agreement.³ These Procedures apply to BBC UK Public Broadcasting Services ("BBC broadcasting services") and BBC UK Public On Demand Programme Services ("BBC ODPS").⁴
3. Separate procedures apply to the consideration of Fairness and/or Privacy complaints.⁵
4. Under Article 57(2) of the Agreement, Ofcom may, in exceptional circumstances, intervene at an earlier stage to handle and resolve an editorial standards complaint which has not been resolved by the BBC.
5. Ofcom may launch investigations on its own initiative as well as intervene at an earlier stage as set out in Article 57(2), whether or not the BBC has started its own investigation, or fast-tracked a case⁶.
6. For editorial standards complaints about BBC online material, Ofcom and the BBC have an Arrangement whereby Ofcom is not required to resolve complaints about standards in the content of BBC online material and Ofcom has no related enforcement powers, although it must consider whether relevant editorial standards have been observed, and give an opinion, and such recommendations as may be appropriate.⁷

BBC procedures for self-initiated investigations and fast-tracked editorial complaints

7. As well as the BBC Complaints Framework, the BBC has two additional procedures:
 - a. a Procedure for self-initiated investigations of potential breaches of editorial standards⁸ (see Annex 1), and
 - b. a Procedure for the handling of fast-tracked editorial complaints⁹ (see Annex 2).
8. The procedure for self-initiated investigations of potential breaches of editorial standards outlines the formal process for occasions where the BBC considers that there are strong grounds to believe a BBC guideline or policy has been broken and senior management

¹ <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>.

² https://www.bbc.co.uk/contact/sites/default/files/2020-06/BBC_Complaints_Framework.pdf. June 2020.

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf. April 2017.

⁴ Such as the BBC iPlayer.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf.

⁶ [Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services \(ofcom.org.uk\)](https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf)

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf. Ofcom's procedures for handling complaints relating to BBC online material:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/101893/bbc-online-procedures.pdf.

⁸ <https://www.bbc.co.uk/contact/procedure-for-self-initiated-investigations-of-potential-breaches-of-editorial-standards>.

⁹ <https://www.bbc.co.uk/contact/procedure-for-fast-tracked-editorial-complaints>.

- believe the potential seriousness warrants immediate investigation outside the formal BBC complaints process.
9. The procedure for fast tracked editorial complaints sets out the factors which will be taken into account by the BBC in the decision to fast track an editorial complaint, and sets out the process to be followed.
 10. It is important that Ofcom is made aware of such cases so that we can make appropriate and timely decisions regarding our powers to intervene at an earlier stage to handle and resolve a relevant complaint.

Protocol for communication between the BBC and Ofcom regarding cases which fall under the above procedures

11. The BBC will notify Ofcom as soon as reasonable, when a decision has been made to apply the self-initiated and/or fast-tracked procedures to cases which:
 - a) relate to content within Ofcom's remit, including editorial standards complaints, Fairness and/or Privacy complaints, complaints about online material; and
 - b) are of a potentially serious nature. Ofcom would consider a case to be potentially serious in circumstances including, but not limited to cases which are: likely to incite crime; may cause financial or physical harm, or harm to minors; involve under 18s in a programme or series; or raise problematic issues of a systemic nature within the broadcasting industry that may affect the BBC. This is in line with Paragraph 1.18 of Ofcom's procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services, which outlines where Ofcom may intervene at an earlier stage to handle and resolve a complaint which has not been resolved by the BBC.
12. Such notifications will normally be made in writing to an Ofcom Director or someone nominated by a Director. Where they are made verbally, the BBC will follow-up with a written notification as soon as reasonable.
13. When such notifications have been made, the BBC will keep Ofcom regularly informed as to the progress of the investigation/fast-tracked response.
14. Early notification of these cases to Ofcom helps to ensure that Ofcom can have confidence in the BBC's process, and that the BBC is transparent in its handling of potentially serious breaches.
15. Should Ofcom determine it to be necessary to exercise its power to intervene at an earlier stage to handle and resolve a relevant complaint which has not been resolved by the BBC, it will inform the BBC as soon as possible after the decision to intervene has been made.
16. We will review this protocol annually.

Annex 1

Procedure for self-initiated investigations of potential breaches of editorial standards

Introduction

- This document outlines the procedures the BBC will adopt for self-initiated investigations into potential breaches of editorial standards.
- This procedure is invoked at the discretion of the BBC, and need not relate to an existing complaint.
- Its purpose is to ensure the existence of a formal process for those occasions where there are strong grounds to believe that a BBC guideline or policy has been broken and senior management believe the potential seriousness of the offence warrants immediate investigation outside the formal BBC complaints process.
- These potential breaches may relate not only to issues arising after the broadcast or publication of the material in question, but also issues occurring at any stage of its preparation.
- This procedure is not intended to bypass the existing BBC complaints process and the existence of an internal investigation will not be a bar to complainants if they wish to use existing procedures to express concern about any aspect of the BBC and its output. In that event, complaint handlers will normally await the outcome of the self-initiated investigation before giving a substantive response.

How the BBC will handle an internal inquiry

- Responsible Divisions and content makers are usually expected to recognise where content they have produced is in breach of the Editorial Guidelines.
- In more serious cases (taking account of reputational risk as well as the gravity of the potential breach), the Director-General or senior management will initiate an investigation to be led by a senior editorial figure or figures outside the division concerned and/or from the Executive Complaints Unit. This will be done on a case-by-case basis and the composition of the investigating team will depend on the nature of the allegations, the content it relates to and the expertise required.
- In the most serious cases, the BBC will also consider bringing in a non-BBC figure to join or lead such investigations.
- Investigators will give the relevant content makers sight of the complaint (if there is one) or details of the alleged breach and an appropriate opportunity to respond (which may be oral) to the issues of concern, subject to the requirement to reach a timely resolution.
- Investigators will make a recommendation to the Director-General as Editor-in-Chief unless the decision has already been taken to delegate the authority to the investigators or another senior editorial figure in the BBC.
- The findings of editorial breaches resulting from self-initiated investigations will be published.
- Where the decision to apply this procedure is taken by the Director-General in their role as editor-in-chief or by someone nominated by the Director-General in that capacity, that fact will be made public as soon as reasonable after the decision is made.

Annex 2

Procedure for fast-tracked editorial complaints

Decisions on when to fast-track a complaint must be taken by the application of editorial judgement and on a case by case basis. The following list sets out the kind of considerations which, singly or in combination, would be likely to guide a decision in individual cases.

- The significance of the potential breach of standards identified
- The potential reputational damage
- The profile of the programme (or other item of output) complained of
- The level of public concern attaching to the issue(s) of complaint
- The nature of the complainants (first or third party, corporate body, person in public life)
- The existence of strong prima facie grounds for suspecting a serious breach of standards
- Where the identification of a breach and speedy correction or apology is necessary to ensure BBC's adherence to its editorial standards.

The decision to apply the fast-track procedure will be taken by the Director-General in his role as editor-in-chief or by someone nominated by the Director-General in that capacity, and it will be final. Where the decision to apply this procedure is taken by the Director-General or the nominated person, that fact will be made public as soon as reasonable after the decision is made. The Director-General or the nominated person will determine the scope of any expedited investigation. The Executive Complaints Unit (ECU) will take on the primary investigating role on most occasions, but in some cases outside support may be sought in order to ensure a speedy resolution.

Content-makers whose work is subject to the fast-track procedure will be given sight of the complaint and appropriate opportunity (which may be oral) to respond to the issues of concern, subject to the requirement to reach a timely resolution.