

OFCOM GUIDELINES FOR DEALING WITH OVERSEAS REGULATORS

1. INTRODUCTION

- 1.1 These guidelines explain the procedures Ofcom will usually follow when handling:
 - a) standards complaints about services which fall under UK jurisdiction but are available to viewers in other territories, and
 - b) standards complaints about services falling under the jurisdiction of overseas regulators but available to viewers in the UK.
- 1.2 Ofcom will consider each case on its merits and will apply these guidelines where it is appropriate to do so, subject to and in accordance with its regulatory obligations. These guidelines are not legally binding.
- 1.3 These guidelines are separate from the cooperation procedures set out in section 335A of the Communications Act 2003 and Chapter V of the European Convention on Transfrontier Television (“ECTT”) and should not be confused with those procedures.
- 1.4 These guidelines reflect Ofcom’s current practice, and we hope they will encourage understanding and further co-operation between Ofcom and overseas regulators.

2. BACKGROUND

- 2.1 Ofcom is the independent regulator of the UK communications industries. It is responsible for, among other things, regulating programme content on television, radio and on-demand services falling under UK jurisdiction and it co-regulates broadcast advertising on these services with the Advertising Standards Authority (“ASA”). Although falling within UK jurisdiction for the purposes of regulation, many services are receivable in other territories.
- 2.2 Following Brexit, the UK is no longer a party to the Audiovisual Media Services Directive¹ (“AVMSD”) which previously applied in the UK and set out the framework for regulation of television services and audiovisual on-demand services across Europe based on the country of origin principle.
- 2.3 In the absence of the AVMSD, Ofcom has jurisdiction over linear TV services based on a number of factors including where the service is based, where the service is broadcasting to and the medium of broadcast (satellite, cable or online). Any television service that appears on a regulated UK Electronic Programme Guide (“EPG”) will be licensed and

¹ Directive 2010/13/EU as amended by Directive 2018/1808/EU

regulated in the UK, with the exception of TG4, RTÉ1, RTÉ2 and television services from countries party to the ECTT.

- 2.4 Ofcom regulates on-demand programme services (“**ODPS**”) if their head office and editorial decision-making capacity are based in the UK. Multiple ODPS which are not under UK jurisdiction are available in the UK, and ODPS under UK jurisdiction are available in other territories.
- 2.5 Ofcom handles complaints about television, radio and ODPS which fall under UK jurisdiction but which are receivable in other jurisdictions. Similarly, there are instances where services established (and licensed or authorised) in other jurisdictions generate complaints from members of the public in the UK. Ofcom considers that encouraging cooperation and mutual assistance between regulatory bodies is the best way of ensuring these complaints are properly managed.

3. LAWS, CODES AND GUIDANCE

- 3.1 Ofcom-regulated television and radio licensees and providers of ODPS must comply with all relevant statutory requirements as well as the applicable codes:
 - a) the applicable television and radio codes are published and available on the Ofcom website (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>),
 - b) relevant codes for advertising are available on the ASA website (<https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>), and
 - c) the rules and guidance relating to ODPS are available on the Ofcom website (https://www.ofcom.org.uk/_data/assets/pdf_file/0018/208206/odps-rules-and-guidance.pdf)².
- 3.2 Overseas regulators may wish to refer to these before addressing any specific queries to Ofcom.

4. COMPLAINTS

Complaints about Television and Radio Programmes and ODPS

- 4.1 Procedures for complaints about television or radio programmes and ODPS are set out in detail on the Ofcom website (<https://www.ofcom.org.uk/complaints/complain-about-tv-radio-a-website>).
- 4.2 Ofcom has two sets of procedures for dealing with television and radio broadcasting standards complaints: one for complaints regarding content standards and one for complaints regarding fairness and privacy issues. Other than in exceptional circumstances complaints about programmes on BBC TV or radio or BBC iPlayer must first be raised with the BBC.

² It should be noted that the rules relating to ODPS are significantly less onerous than those applied to linear television

- 4.3 Ofcom's procedures for investigating alleged breaches of television or radio content standards require that complaints are made within 20 working days of the programme being broadcast. This deadline reflects the fact that there are limits on licensees' requirements to retain recordings, and it may not be possible for Ofcom to assess and/or investigate complaints it receives more than 20 working days after the relevant programme has been broadcast.
- 4.4 Complaints about ODPS will usually only be considered once the complainant has followed the complaints procedure set out by the service provider. ODPS providers are required to retain copies of programmes for 42 days after the programme ceases to be available. Complainants are encouraged to act promptly in making any complaint and should complain to Ofcom within 20 working days of the final response from the ODPS provider.
- 4.5 Ofcom will log all complaints that it receives and acknowledge receipt but does not normally write to complainants with the outcome of its deliberations. Ofcom then makes an initial assessment of the complaint to determine if the complaint raises potentially substantive issues under the relevant code/s and if the material requires further assessment and/or investigation.
- 4.6 If Ofcom considers there may have been a breach of the relevant code/s, it will launch an investigation, at which point it will normally ask the broadcaster for its representations regarding the material. At the end of the investigation Ofcom will determine whether or not the relevant code/s (or relevant licence condition) has been breached. All breach decisions are published in Ofcom's Broadcast Bulletin, which is available on our website: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>.
- 4.7 If Ofcom considers a breach to be serious, repeated, deliberate or reckless it may decide to impose a statutory sanction on the provider of the service. In the most serious cases, the sanction may be a financial penalty and/or the revocation of the broadcaster's licence or entitlement to provide an ODPS.
- 4.8 Ofcom's procedures for the handling of fairness and privacy complaints follow a similar process to that set out above, but there are some additional stages which are set out in the procedures. Both the complainant and the broadcaster may make representations, and consideration of the case may involve a hearing.

Complaints about Advertising

- 4.9 Ofcom considers complaints about political advertising, programme trailers, product placement and programme sponsorship as well as the identification, amount and placement of adverts around programmes. Complaints are made via the Ofcom website (<https://www.ofcom.org.uk/complaints/complain-about-tv-radio-a-website/an-advert-i-saw>).
- 4.10 Complaints about the content of spot advertising (in commercial breaks on television or radio), advertising within an ODPS and shopping channels are subject to the UK Code of

Broadcast Advertising (<https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>) and are handled by the ASA on Ofcom's behalf.

- 4.11 Information about how to submit an advertising complaint to the ASA can be found at <https://www.asa.org.uk/make-a-complaint.html>. The ASA's decisions are published on the ASA website at <https://www.asa.org.uk/codes-and-rulings/rulings.html#rulings>.

5. HANDLING OF CROSS BORDER COMPLAINTS BY OFCOM

Services regulated by Ofcom

- 5.1 If an overseas regulator receives a complaint relating to a service regulated by Ofcom the regulator may forward that complaint to Ofcom for consideration or forward Ofcom's contact details to the complainant. If the complaint is about advertising handled by the ASA the receiving regulator may forward the details of the ASA or the details of the complaint directly to the ASA for consideration.
- 5.2 If Ofcom receives a complaint directly from a member of the public concerning a service under Ofcom's jurisdiction whose output is aimed at another territory, Ofcom may, where permitted³, inform the regulatory body of that territory that a complaint has been received.
- 5.3 Under either of the scenarios set out above, the overseas regulator may, if it wishes, provide Ofcom with any information relevant to the complaint (for example, information regarding the cultural context). Ofcom will consider this information. Where this regulator wishes to provide formal representations to Ofcom, it should do so as soon as is reasonably practicable.
- 5.4 Ofcom will handle such complaints in accordance with UK law and Ofcom's published rules and procedures and may write to the complainant or regulator where appropriate. Ofcom will, where permitted, show its decisions or adjudications to the official regulator of the other jurisdiction. Final decisions and adjudications are published on the Ofcom website at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>
- 5.5 An overseas regulator may also send the results of any monitoring reports on the content of foreign television broadcasts to Ofcom for consideration.

Services regulated in another jurisdiction

- 5.6 If Ofcom receives a complaint from a member of the public about a service receivable in the UK but regulated overseas Ofcom will in the first instance direct the complainant to the relevant media regulator. If Ofcom considers the complaint to raise serious issues, Ofcom will, where permitted, alert the regulator to the complaint.

³ For example, Ofcom is precluded under UK law in some cases (such as under section 393 of the Communications Act 2003) to disclose or share information with others. We may therefore need to take legal advice on whether we could provide certain information to an overseas regulator.

- 5.7 To the extent possible, Ofcom may provide the relevant regulator with further information if requested.

6. COOPERATION AND ASSISTANCE

- 6.1 Ofcom is happy to respond to queries from regulatory bodies in other territories about the laws, rules and guidance relevant to regulating television, radio or audiovisual on-demand content under its jurisdiction.
- 6.2 It would be helpful if regulatory bodies in other jurisdictions would be willing to provide similar assistance regarding the laws, rules and guidance relevant to regulating television, radio or audiovisual on-demand services within their own jurisdiction. Information in the light of national cultures and heritage and local sensitivities would be particularly welcome.

7. CONTACT DETAILS

- 7.1 General queries about these guidelines should be addressed to:
ofcom.international@ofcom.org.uk.
- 7.2 All complaints from regulators of audiovisual media services in other territories about services under UK jurisdiction should be addressed in the first instance to:
ofcom.international@ofcom.org.uk . Please put 'Complaint' in the e-mail subject line.