

# Ofcom Fairness & Privacy Complaints Handling

## Comments from The MediaWise Trust

### 1. The MediaWise Trust

MediaWise (formerly PressWise) exists to:

- provide free, confidential advice and assistance for members of the public affected by inaccurate, intrusive, or sensational media coverage;
- deliver use-of-the-media training for the voluntary sector and members of the public;
- devise and deliver training on ethical issues for media professionals;
- conduct research and publish material about media law, policy and practice;
- contribute to public debate about the role and impact of the mass media.

MediaWise believes that press freedom is a responsibility exercised by journalists and editors on behalf of the public. The most important role of journalists in a democracy is to inform the public about events, issues and opinions which might influence the decisions people take about their lives and the society in which they live. For that reason the Trust asserts the public's right to know when inaccurate information has been delivered by the mass media.

PressWise was set up as a voluntary organisation in 1993 by 'victims of media abuse', and registered as a charity in 1999, and changed its name to The MediaWise Trust in 2005. It is funded by donations, grants and commissions.

The Trustees and patrons include respected journalists, academics and members of the public with experience of the media. The Trust is chaired by broadcaster Charles Fletcher MBE, the Vice-Chair is Prof Naomi Sargent, and its current President is Sir Louis Blom-Cooper QC, the last Chairman of the Press Council. Its Trustees include Glenn Del Medico, former broadcast legal advisor to the BBC, Jocelyn Hay CBE, founder chair of the Voice of the Listener and Viewer, and Jim Latham, Secretary of the Broadcast Journalism Training Council.

MediaWise has a national office in Bristol with four staff. The Trust's Director and two part-time Associate Directors are experienced journalists and trainers who have worked internationally and in all sectors of the media. The Trust also employs a network of working journalists to conduct research and deliver training.

The Trust has devised and delivered a wide range of training packages for media professionals and non-governmental organisations in some 40 countries. As part of this work the Trust has developed guidelines on a variety of problematic aspects of media coverage, including:

- Health communications (with WHO European Health Communication Network)

- Reporting about children (with the EC Daphne Initiative, the International Federation of Journalists [IFJ] and UNICEF)
- Reporting Suicide (with Befrienders International, the IFJ and the NUJ)
- Reporting on asylum and refugee issues (with NUJ, UNHCR, and the Refugee Council)

The Trust regularly contributes to public debate via the media and events concerned with media ethics and regulation. It also organises opportunities for dialogue between media professionals and the public in the UK. These have included:

- Children's Right vs Press Freedom: Who wins? (Bath, 2005) with Quarriers
- Aliens in the Media (Brussels, 2005) with Jesuit Refugee Service & IFJ
- Reporting Suicide (London, 2002)
- Journalism and Public Trust (London, 2004) with NUJ Ethics Council
- Refugees, Asylum-seekers and the Media (London, 2001)
- Access to the Information Society (Bristol, 1998) with European Commission
- Ethnic Minorities and the Media (London, 1997)
- Child Exploitation and the Media (London, 1997)

Recent MediaWise publications include

- *Exiled Journalists in Europe* (2005)
- *Working with the media: A resource for health communicators* (2005)
- *The RAM Report: campaigning for fair and accurate coverage of refugees and asylum-seekers* (2005)
- *Children's Rights and the Media: a resource for journalists* (2<sup>nd</sup> edition, 2005)
- *Satisfaction Guaranteed; Press Complaint systems under scrutiny* (2004)

**Full details of MediaWise activities can be found at [www.mediawise.org.uk](http://www.mediawise.org.uk)**

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## Comments on the Ofcom consultation document

### **Introduction**

Ofcom has a very broad range of regulatory responsibilities over the workings of the electronic media industries. However for the general public perhaps its most significant function is as the body to whom they have recourse if they are dissatisfied with the services provided by these enormously powerful industries.

In our view Ofcom has a duty of care to the public in providing a sympathetic response to and fair and accountable procedures for complainants, especially in the case of fairness and privacy.

In particular it needs to be sensitive to the fact that many complainants will have little experience either of the media or the regulatory authorities. Some will be upset or even confused by the implications of finding themselves in the media spotlight and are likely to feel intimidated at the prospect of challenging broadcasters.

It is important that Ofcom should ensure that its procedures are simple to understand and explain and clear from the outset to anyone wishing to make a complaint. It should seek proper clarification from complainants if there are doubts about the precise nature of the complaint. It should start from the assumption that complaints are not familiar with its Codes, and ensure there is agreement when proposing how a complaint should be couched if it is to be dealt with properly.

MediaWise exists to assist complainants and we are happy for Ofcom to refer individuals to us if it is felt they would benefit from independent, professional advice or assistance with presenting their case initially in writing or later at hearings.

In general the proposed Ofcom procedures seem reasonable and fair. There are however a few points that we would like to draw to your attention.

### **Making complaints**

3.3 It is perfectly reasonable to expect complaints to be made in writing - but to make exceptions where appropriate. Is there any need for 'Due to their complexity'? In fact the complexity of some fairness and privacy complaints may be the reason why a hearing is likely to be the most satisfactory method of resolving the complainant's concerns, not least because the sense of hurt, or slight, at misrepresentation, has a strong emotional element. When things go wrong in relationships, talking about it is one of the most effective means of setting the record straight. In seeking to resolve such complaints Ofcom should give thought to whether arranging an early 'good offices' meeting between the complainant and the producers might not be a more suitable and speedy method of resolution than a protracted correspondence.

[Footnote to drafters: Instead of he/she - why not use s/he - shorter still and covers the options more easily.]

### **Third party complaints**

- 3.4 It would be useful if Ofcom specified that it will not consider complaints from third parties (members of the public not directly involved in a programme who might have been upset by or concerned about fairness and privacy issues raised by the programme).

However it might be a useful monitoring exercise if Ofcom were to acknowledge and keep records of complaints from third parties about fairness and privacy. The results could inform research and provide an albeit unscientific but revealing litmus test of public opinion and 'taste'.

### **Complaints assessment**

- 3.6 Ofcom would do itself a lot of favours by abandoning the use of the term 'entertainment' and its derivatives when referring to the process of deciding whether or not to proceed with consideration of complaints. It is highly insensitive and inappropriate to use such terms when dealing with complaints about broadcast material, and has given rise to some robust comments from complainants whom we have advised. It conjures up images of the Programme Executive giggling at the temerity of members of the public who wish to take to task the bastions of British broadcasting.

Entertainment is synonymous with amusement and diversion. Even in a Collins paperback dictionary the meaning of entertainment as 'consideration' comes last.

Why not simply say 'On receipt of a fairness and privacy complaint the Programme Executive will, in the first instance, decide whether it complies with the terms of the complaints category and merits being taken forward as a serious complaint.' This process could be described as the 'initial compliance decision', a term that few could object to. It should be recalled that those who decide to complain may often be upset, indignant or irritated. They have taken the trouble to make use of a procedure that is their to assist them if they have legitimate grievances and their feelings need to be taken into account, whether or not the complaint eventually proves to be valid. This is a matter of courtesy and 'good customer relations'. It should not be beyond the wit of the drafters of Ofcom documents to find more appropriate terms for use throughout.

### **Proceeding with complaints**

- 3.10 These may seem fair requirements although there may be circumstances of controversy over programmes where a complainant, or indeed a programme-maker or broadcaster, may feel obliged to offer a public statement about their position. Indeed the right to comment may itself be a matter of fairness. This should not prevent a complaint being made or proceeded with.

It may be helpful were Ofcom to indicate that where media or even political interest is shown in a matter before them, in advance of a adjudication being made, its public affairs department will be available to assist either party in presentation of its position. While broadcasters are well placed to handle

hostile press interest, members of the public are rarely equipped to handle persistent approaches from the press especially if they feel that this will afford them an opportunity to tell the world 'their side of the story' after a programme has been broadcast to a sizeable audience.

[Although it has not yet been scheduled for broadcast, controversy has arisen over Marc Isaacs' C4 commission 'How to fall in love'. It has been screened in public and the protagonists have already been asked to comment about issues which might eventually form the basis of privacy and fairness complaints. In what way would such publicity affect consideration of a future complaint?]

3.11 Rather than the bracketed final sub-clause (the terms of which are reasonable), why not have a new sentence with an additional point of explanation for the complainant. For example. 'Where a fairness or privacy case is particularly detailed or complex and the broadcaster is to submit a statement in response, rather than propose redress, Ofcom accepts that a longer period may be necessary. In these circumstances Ofcom will agree a reasonable extension of time with the broadcaster, and explain this extension to the complainant.'

By the same token Ofcom should also seek to ensure that complaints are resolved as speedily as possible, and should form a swift view if either party is demanding unreasonable extensions of time.

### **Appropriate resolution**

If Ofcom decides not to proceed with a complaint because it accepts that the broadcaster has offered reasonable redress, it should make clear to the complainant the reasons for its decision. This would help to alleviate concern that the regulator is more inclined to favour the broadcaster (an often expressed view). After all, members of the public do feel 'powerless' in the face of the immense influence that the media have.

It might also be helpful to explain more fully what is meant by 'appropriate regulatory action' if broadcasters fail to abide by the confidentiality requirements.

While it would be preferable if complaints could be resolved after a meeting or an exchange of two submissions by both parties, it should be made clear that this is an Ofcom 'aspiration'.

In reality matters can come to light during the process which may require extended correspondence.

(In one recent case we have been monitoring, information was released on a piecemeal basis by the broadcaster, and the complainant felt compelled to supply more detailed evidence, giving rise of exchanges between complainant and broadcaster that eventually spanned two years.)

In any event the complainant should be given a third opportunity to respond – the broadcaster having had the advantage of broadcasting the programme in the first instance.

## **Hearings**

3.17 It is pleasing that Ofcom is retaining the procedures adopted by the Broadcasting Standards Council for complaints hearings. The atmosphere should be as friendly and informal as possible, with reasonable latitude and time given to complainants to make their point, and an encouragement to broadcasters to appreciate the emotions of their critics.

## **Adjudications generally**

3.21 The opportunity should be offered to the complainant to choose whether or not the full adjudication should be made public, especially in respect of privacy complaints. Ofcom should also provide for the possibility that its adjudication should be published in an appropriate newspaper or magazine of the complainant's choice, especially in cases which have given rise to press comment or speculation.

## **Informed consent**

This consultation provides Ofcom with another opportunity to consider the question of informed consent. In privacy and fairness complaints where the complainant has been a participant in the issues it is germane to discover the extent to which their participation has been obtained on fair and fully informed consensual terms.

Ofcom should enquire of both programme-maker and complainant precisely the terms of engagement in the programme, and this should include any documentary evidence. All the more reason for Ofcom to require programme-makers to devise sensible, clear and consistent consent forms which should include any special arrangements relating to the nature of the programme, and be signed by both parties. Indeed this might nip in the bud any frivolous or vexatious subsequent complaints, as well as being a form of protection for participants if the producers overstep the terms of the contract.

**Mike Jempson**  
Bristol, December 2005