



GIBRALTAR REGULATORY
AUTHORITY

Procedures for Handling of Complaints

For the purpose of investigating breaches of Codes of Practice in television and radio broadcasts.

4th November 2016

BC04/16

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1. Introduction

This document outlines the Gibraltar Regulatory Authority's (the "Authority") guidance procedures for the handling and resolution of complaints (or for the conduct of its own investigations) regarding the broadcaster's compliance with all the relevant Codes of Practice.

With these procedures, it is our aim to encourage and ensure that all television and radio broadcasting services comply with the broadcasting standards and provide adequate protection to all viewers from the inclusion of offensive and harmful material.

These procedures shall apply to broadcasters of television services as well as broadcasters of radio services in Gibraltar.

This document does, by no means, set out the procedures for a right of reply in relation to broadcasting services, as provided under section 39 of the Broadcasting Act 2012 (the "Act"). Any person whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a broadcasting service, should refer to the procedures set out in the 'Right of Reply' Code.

The Authority may launch investigations on its own initiative as well as investigate complaints. The procedures involved in a complaint-led investigation and an Authority-initiated investigation are the same.

These procedures are effective from the 4th November 2016.¹

¹ Procedures set out in this document, and any related guidance, may be reviewed and amended at any time.

2. Making a Complaint

Complaints under these procedures should be made directly to the Authority by any person or body who considers that a broadcaster has failed to comply with the rules as set out in any of the published Codes of Practice.

2.1 Information Required for the Complaints Procedure

The Authority requests that all complaints are submitted by using the online Complaints Form which can be accessed from our website (www.gra.gi/broadcasting/complaint-form). All online forms will be automatically forwarded to the Authority's Broadcasting Division.

Alternatively, complaints may be submitted via email or post to the following address:

Broadcasting Division
Gibraltar Regulatory Authority
2nd Floor
Eurotowers 4
1 Europort Road
Gibraltar
Email: broadcasting@gra.gi

When submitting a complaint via email or post, ensure to include sufficient, detailed information about the matter being complained about, specifically:

- (a) The name/title of the programme;
- (b) The date and time of the programme;
- (c) The channel on which it was broadcast;
- (d) The nature of the complaint and, where possible, the particular parts of the programme complained about;
- (e) The complainant's full contact details;
- (f) Whether (and, if so, when) the complainant has submitted a complaint to the relevant broadcaster.

The inclusion of these details is crucial to the complaints process. Failure to provide sufficient information may hinder the investigation and prevent the Authority from effectively concluding the complaints procedure.

Unless a complainant specifically requests at the time a complaint is made that his/her name and contact details should remain confidential, the Authority reserves the right to disclose these to the broadcaster.

2.2 Time Limits on Making a Complaint

Complainants should submit their complaint to the Authority within 10 working days of the broadcast of the relevant programme. Ordinarily, the Authority will not accept a complaint which is made after this deadline.

However, in the event that a complaint is submitted later than 10 working days after broadcast, complainants should explain why the complaint was not submitted earlier. The Authority will then consider all relevant factors to decide whether or not the Authority should investigate the complaint despite the delay in its submission.

2.3 Initial Assessment and Investigation

All complaints are important to the Authority and they provide a useful account of whether a broadcaster is failing to comply with the published Codes of Practice. The Authority will log and acknowledge every complaint that it receives. However, the Authority will not normally correspond any further with individual complainants and will itself carry out a process of initial assessment and investigation of all complaints using the following criteria:

- (a) The Authority will first consider whether a complaint raises potentially substantive issues under any of the Codes of Practice which warrant an independent investigation. The Authority will do so by reference to the gravity and/or extent of the matter being complained of, particularly if it involves ongoing harm, harm to minors and/or financial harm.
- (b) Once the Authority has established that it should assess the matter further, the broadcaster will be asked for a copy of the relevant programme which must be provided within 3 working days. At this stage the broadcaster will not be expected to provide any written representations.
- (c) Based on the initial assessment of the complaint and a review of the relevant broadcast, the Authority will consider whether there may have been a breach of any of the published Codes of Practice and whether formal response from the broadcaster should be sought. The Authority may however, decide not to investigate the matter any further and publish its decision on their website.
- (d) The Authority aims to complete an initial assessment of all complaints within 15 working days.
- (e) There may be specific cases where the matters raised by a complainant are considered by the Authority as a clear breach of a relevant Code, a matter of objective fact (as set out in the Codes of Practice). In these cases, the Authority will not seek the broadcaster's initial representations but will instead write to the broadcaster with its preliminary view on the substance of the complaint and initiate the investigation process.
- (f) The Authority aims to complete all investigations within 30 working days.

2.4 Representations from Third Parties

The Authority recognises that there may be persons/bodies who may be directly affected by the outcome of the Authority's investigation and determination of a complaint, and who may have interests independent of the relevant programme (e.g. presenters, producers and/or independent programme-makers). Wherever possible, broadcasters should seek to take account of and include the representations of such persons/bodies in their submissions in response to a complaint and confirm to the Authority that they have done so.

However, such persons/bodies may make representations on their own behalf directly to the Authority in respect of a complaint the Authority proceeds to investigate. In such a case, persons/bodies should seek to make representations to the Authority as early in an investigation of a complaint as possible, setting out if and to what extent their representations differ from those of the broadcaster. The Authority, where appropriate, will take those representations into account and include those persons/bodies in its decision-making process under these procedures.

3. The Authority's Preliminary View

The Authority, on receipt of the broadcaster's representations (as per rule 2.3(c) above), will prepare its preliminary view on the context of the complaint. This preliminary view is only provisional and may be subject to change in the light of subsequent representations and/or material provided by the broadcaster and any relevant third party.

The Authority's preliminary view may contain the following:

- a summary of the complaint;
- a summary of the material parts of the programme/broadcast to which the complaint relates;
- the particular provisions from any Code of Practice which the Authority deems are relevant and applicable to the complaint; and
- the Authority's preliminary assessment of whether any breaches of those provisions have occurred and the reasons behind that assessment.

If in any case, the Authority considers it necessary to obtain further information to ensure that it can fairly and properly prepare its preliminary view, the Authority may seek such information before finalising this stage.

Once the Authority has completed its preliminary view, the Authority will forward this assessment to the broadcaster and any relevant third party and request representations within 10 working days.

Following consideration of any representations on its preliminary view, the Authority will reach its final decision and inform the broadcaster accordingly.

4. Publication of Decision

Before publicising the final decision, the Authority will provide the broadcaster with a strictly embargoed copy. The broadcaster will be afforded 48 hours in which to respond for the purpose of correcting factual inaccuracies only.

The Decision will be published on the Authority's website.

The Authority's decision is final and only amenable to judicial review.

5. Time Limits

Complainants and broadcasters should keep to the time limits specified in these procedures. However, the Authority may consider it appropriate (in the interests of fairness and/or to properly carry out an investigation) to amend or adapt the time limits set out in the procedures in a particular case.

Any complainant or broadcaster seeking an extension to a time limit should explain in writing to the Authority why it believes it is appropriate.

6. Non-Disclosure Settlement

The Authority requires that all parties to a complaint should not publicly disclose any correspondence, documents or other relevant material concerning the said complaint. Parties (complainants, broadcasters and any directly affected third parties) may, unless otherwise indicated, make public the fact that a complaint has been made or that the Authority is investigating a case. However, all parties involved are subject to the requirement of non-disclosure in relation to all other material submitted and communications/correspondence entered into in relation to the complaint or case.

This requirement of non-disclosure does not limit what the Authority can publish in its decision at the end of the investigation.

The Authority may also withhold material it believes to be confidential, market sensitive or legally privileged, or that it is under some other legal obligation to protect from disclosure. In such cases, the broadcaster will be notified that relevant material has been withheld and the reasons why. Moreover, once a complaint has been made or once the Authority has started investigating a case, no party should take any steps which could – whether intentionally or not – compromise, or risk compromising, a fair decision on the matter by the Authority. Failure to follow these requirements may result in the Authority ceasing to consider the party's representations.

7. Sanctions

As per section 22(2) of the Act, if a broadcaster fails to comply with a Code of Practice, the provisions of section 20 of the Act shall apply as if failure to comply with the Code of Practice were a failure to comply with a licence condition.

For the avoidance of doubt and as stated in section 20(6) of the Act, subsections (1)(a), (2) and (3) of section 20 namely "Financial Penalties" shall also apply to the Gibraltar Broadcasting Corporation (the "GBC").