



# Broadcasting Act 1996

## 1996 CHAPTER 55

### PART V

#### THE BROADCASTING STANDARDS COMMISSION

##### *Complaints*

#### **110 General functions of BSC in relation to complaints**

- (1) Subject to the provisions of this Part, it shall be the duty of the BSC to consider and adjudicate on complaints which are made to them in accordance with sections 111 and 114 and relate—
  - (a) to unjust or unfair treatment in programmes to which section 107 applies, or
  - (b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
- (2) Subject to those provisions, it shall also be the duty of the BSC to consider, and make findings on, complaints which are made to them in accordance with sections 113 and 114 and relate—
  - (a) to the portrayal of violence or sexual conduct in programmes to which section 108 applies, or
  - (b) to alleged failures on the part of such programmes to attain standards of taste and decency.
- (3) In exercising their functions under subsection (1), the BSC shall take into account any relevant provisions of the code maintained by them under section 107; and in exercising their functions under subsection (2) they shall take into account any relevant provisions of the code maintained by them under section 108.
- (4) In this Part—
  - “a fairness complaint” means a complaint to the BSC in respect of any of the matters referred to in subsection (1)(a) and (b), and
  - “a standards complaint” means a complaint to the BSC in respect of any of the matters referred to in subsection (2)(a) and (b).

## **111 Complaints of unfair treatment etc**

- (1) A fairness complaint may be made by an individual or by a body of persons, whether incorporated or not, but, subject to subsection (2), shall not be entertained by the BSC unless made by the person affected or by a person authorised by him to make the complaint for him.
- (2) Where the person affected is an individual who has died, a fairness complaint may be made by his personal representative or by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he was at his death a member, or in any other way).
- (3) Where the person affected is an individual who is for any reason both unable to make a complaint himself and unable to authorise another person to do so for him, a fairness complaint may be made by a member of the family of the person affected, or by some other person or body closely connected with him (whether as his employer, or as a body of which he is a member, or in any other way).
- (4) The BSC shall not entertain, or proceed with the consideration of, a fairness complaint if it appears to them that the complaint relates to the broadcasting of the relevant programme, or to its inclusion in a licensed service, on an occasion more than five years after the death of the person affected, unless it appears to them that in the particular circumstances it is appropriate to do so.
- (5) The BSC may refuse to entertain a fairness complaint if it appears to them not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast or, as the case may be, included in a licensed service.
- (6) Where, in the case of a fairness complaint, the relevant programme was broadcast or included in a licensed service after the death of the person affected, subsection (5) shall apply as if at the end there were added “within five years (or such longer period as may be allowed by the BSC in the particular case under subsection (4)) after the death of the person affected”.
- (7) The BSC may refuse to entertain—
  - (a) a fairness complaint which is a complaint of unjust or unfair treatment if the person named as the person affected was not himself the subject of the treatment complained of and it appears to the BSC that he did not have a sufficiently direct interest in the subject-matter of that treatment to justify the making of a complaint with him as the person affected, or
  - (b) a complaint made under subsection (2) or (3) by a person other than the person affected or a person authorised by him, if it appears to the BSC that the complainant’s connection with the person affected is not sufficiently close to justify the making of the complaint by him.

## **112 Committee to consider fairness complaints**

The BSC shall appoint a committee, consisting of members of the BSC, to discharge the functions of the BSC in relation to the consideration of fairness complaints.

## **113 Complaints relating to taste and decency, etc**

- (1) The BSC shall not entertain a standards complaint which is made—

- (a) where the relevant programme is a television programme, more than two months after the relevant date, or
- (b) where the relevant programme is a sound programme, more than three weeks after that date,

unless it appears to them that in the particular circumstances it is appropriate for them to do so.

- (2) In subsection (1) “the relevant date” means—
  - (a) the date on which the relevant programme was broadcast by a broadcasting body or included in a licensed service, or
  - (b) where it has been so broadcast or included on more than one occasion, the date on which it was last so broadcast or included.
- (3) Where, apart from this subsection, there would fall to be considered by the BSC two or more standards complaints which appear to them to raise the same, or substantially the same, issue or issues in relation to a particular programme, the BSC may determine that those complaints shall be treated for the purposes of this Part as constituting a single complaint.

#### **114 Supplementary provisions as to making of complaints of either kind**

- (1) A fairness complaint or a standards complaint must be in writing, or in such other form as the BSC may allow, and must give particulars of the matters complained of.
- (2) The BSC shall not entertain, or proceed with the consideration of, a fairness complaint or a standards complaint if it appears to them—
  - (a) that the matter complained of is the subject of proceedings in a court of law in the United Kingdom, or
  - (b) that the matter complained of is a matter in respect of which the complainant or, in the case of a fairness complaint, the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for the BSC to consider a complaint about it, or
  - (c) that the complaint is frivolous, or
  - (d) that for any other reason it is inappropriate for them to entertain, or proceed with the consideration of, the complaint.

#### **115 Consideration of fairness complaints**

- (1) Subject to the provisions of sections 111 and 114, every fairness complaint made to the BSC shall be considered by them either at a hearing or, if they think fit, without a hearing.
- (2) Hearings under this section shall be held in private; and where such a hearing is held in respect of a fairness complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
  - (a) the complainant,
  - (b) the relevant person,
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body,

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- (d) any person not falling within any of paragraphs (a) to (c) who appears to the BSC to have been responsible for the making or provision of that programme, and
  - (e) any other person who the BSC consider might be able to assist at the hearing.
- (3) Before the BSC proceed to consider a fairness complaint they shall send a copy of it—
- (a) to the relevant person, and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.
- (4) Where the relevant person receives from the BSC a copy of the complaint, it shall be the duty of that person, if so required by the BSC—
- (a) to provide the BSC with a visual or sound recording of the relevant programme or of any specified part of it, if and so far as the relevant person has such a recording in his possession;
  - (b) to make suitable arrangements for enabling the complainant to view or hear the relevant programme, or any specified part of it, if and so far as the relevant person has in his possession a visual or sound recording of it;
  - (c) to provide the BSC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the relevant person is able to do so;
  - (d) to provide the BSC and the complainant with copies of any documents in the possession of the relevant person, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - (e) to furnish to the BSC and the complainant a written statement in answer to the complaint.
- (5) Where the relevant person receives from the BSC a copy of a fairness complaint, it shall also be the duty of that person, if so required by the BSC—
- (a) where the relevant person is a broadcasting body, to arrange for one or more of the governors, members or employees of the body to attend the BSC and assist them in their consideration of the complaint, or
  - (b) where the relevant person is a body other than a broadcasting body, to arrange for one or more of the following, namely—
    - (i) the persons who take part in the management or control of the body, or
    - (ii) the employees of the body,
 to attend the BSC and assist them in their consideration of the complaint, or
  - (c) where the relevant person is an individual, to attend, or to arrange for one or more of his employees to attend, the BSC and assist them in their consideration of the complaint.
- (6) Where the relevant person receives from the BSC a copy of a fairness complaint and, in connection with the complaint, the BSC make to any other person a request to which this subsection applies, it shall be the duty of the relevant person to take such steps as he reasonably can to ensure that the request is complied with.
- (7) Subsection (6) applies to the following requests by the BSC to any such other person as is there mentioned, namely—
- (a) a request to make suitable arrangements for enabling the complainant and any member or employee of the BSC to view or hear the relevant programme,

- or any specified part of it, if and so far as the person requested has in his possession a visual or sound recording of it;
- (b) a request to provide the BSC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the person requested is able to do so;
  - (c) a request to provide the BSC and the complainant with copies of any documents in the possession of the person requested, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
  - (d) a request to furnish to the BSC and the complainant a written statement in answer to the complaint;
  - (e) a request to attend, or (where the person requested is not an individual) to arrange for a representative to attend, the BSC and assist them in their consideration of the complaint.
- (8) Where the BSC have adjudicated on a fairness complaint, they shall send a statement of their findings to the complainant.
- (9) In this section “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body, and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing the service.

## **116 Consideration of standards complaints**

- (1) Subject to the provisions of sections 113 and 114, every standards complaint made to the BSC shall be considered by them either without a hearing or, if they think fit, at a hearing (and any such hearing shall be held in private unless the BSC decide otherwise).
- (2) Where a hearing is held in respect of a standards complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
- (a) the complainant,
  - (b) the relevant person,
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body,
  - (d) any person not within any of paragraphs (a) to (c) who appears to the BSC to have been responsible for the making or provision of that programme, and
  - (e) any other person who the BSC consider might be able to assist at the hearing.
- (3) In a case where the BSC have made a determination in respect of any complaints under subsection (3) of section 113, subsection (2)(a) shall be construed as referring to such one or more of the persons who made those complaints as the BSC may determine.
- (4) Before the BSC proceed to consider a standards complaint they shall send a copy of it—
- (a) to the relevant person, and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.

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- (5) Where the relevant person receives from the BSC a copy of the complaint, it shall be the duty of that person, if so required by the BSC—
- (a) to provide the BSC with a visual or sound recording of the relevant programme or any specified part of it, if and so far as he has such a recording in his possession;
  - (b) to provide the BSC with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as he is able to do so;
  - (c) to provide the BSC with copies of any documents in his possession, being the originals or copies of any correspondence between him and the complainant in connection with the complaint;
  - (d) to furnish to the BSC a written statement in answer to the complaint.
- (6) In this section—
- “licensed service” includes so much of a local delivery service licensed under Part II of the 1990 Act as is, by virtue of section 79(2) or (4) of that Act, treated for certain purposes as the provision of a service licensed under Part I of that Act, and
- “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body, and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.

#### **117 Duty to retain recordings**

For the purposes of sections 115 and 116 of this Act and of section 167 of the 1990 Act (power to make copies of recordings in connection with certain offences) it shall be the duty of each broadcasting body to retain a recording of every television or sound programme which is broadcast by that body—

- (a) where it is of a television programme, during the period of 90 days beginning with the day of the broadcast, and
- (b) where it is of a sound programme, during the period of 42 days beginning with the day of the broadcast.

#### **118 Power to pay allowances to persons attending hearings**

The BSC may, if they think fit, make to any person who attends them in connection with a fairness complaint or a standards complaint such payments as they think fit by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him so to attend.

#### **119 Publication of BSC’s findings**

- (1) Where the BSC have—
- (a) considered and adjudicated upon a fairness complaint, or
  - (b) considered and made their findings on a standards complaint,
- they may give directions of the kind specified in subsection (2).

- (2) Those directions are—
  - (a) where the relevant programme was broadcast by a broadcasting body, directions requiring that body to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions, and
  - (b) where the relevant programme was included in a licensed service, directions requiring the appropriate regulatory body to direct the licence holder to publish those matters in such manner, and within such period, as may be so specified.
- (3) Those matters are—
  - (a) a summary of the complaint;
  - (b) the BSC's findings on the complaint or a summary of them;
  - (c) in the case of a standards complaint, any observations by the BSC on the complaint or a summary of any such observations.
- (4) References in subsection (2) to the publication of any matter are references to the publication of that matter without its being accompanied by any observations made by a person other than the BSC and relating to the complaint.
- (5) The form and content of any such summary as is mentioned in subsection (3)(a), (b) or (c) shall be such as may be approved by the BSC.
- (6) A broadcasting or regulatory body shall comply with any directions given to them under this section.
- (7) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body for the purpose of enabling them to comply with any directions given to them under this section.
- (8) The BSC shall publish, monthly or at such other intervals as they think fit and in such manner as they think fit, reports each containing, as regards every fairness complaint or standards complaint which falls within this subsection and has been dealt with by them in the period covered by the report—
  - (a) a summary of the complaint and the action taken by them on it,
  - (b) where they have adjudicated on it, a summary of—
    - (i) their findings,
    - (ii) any direction given under subsection (1), or other action taken by them, in relation to the complaint, and
  - (c) where a direction has been given under subsection (1) in relation to the complaint, a summary of any action taken by a broadcasting body, a regulatory body or the holder of a licence to provide a licensed service in pursuance of the direction.
- (9) A fairness complaint or standards complaint made to the BSC falls within subsection (8) unless it is one which under section 111(1), (4) or (5), 113(1) or 114(2) they have refused to entertain.
- (10) The BSC may, if they think fit, omit from any summary which is included in a report under subsection (8) and relates to a fairness complaint any information which could lead to the disclosure of the identity of any person connected with the complaint in question other than—

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- (a) a broadcasting or regulatory body, or
- (b) a person providing a licensed service.

- (11) The references in subsections (3)(b) and (8)(b) to the BSC’s findings on a complaint shall be construed, in relation to a fairness complaint which has been considered by them in two or more parts, as references to their findings on each part of the complaint.
- (12) In this section “licensed service”, in relation to a programme to which a standards complaint relates, has the extended meaning given by section 116(6).

## **120 Reports on action taken voluntarily in response to findings on complaints**

- (1) This section applies where the BSC have given a direction under section 119(1) in relation to a fairness complaint or a standards complaint.
- (2) Where the relevant programme was included in a licensed service, the appropriate regulatory body shall send to the BSC a report of any supplementary action taken by—
- (a) the regulatory body,
  - (b) the licence holder, or
  - (c) any other person appearing to the regulatory body to be responsible for the making or provision of the relevant programme.
- (3) Where the relevant programme was broadcast by a broadcasting body, that body shall send to the BSC a report of any supplementary action taken by—
- (a) the broadcasting body, or
  - (b) any other person appearing to that body to be responsible for the making or provision of the relevant programme.
- (4) The BSC may include, in any report under section 119(8), a summary of any report received by them under subsection (2) or (3) in relation to the complaint.
- (5) In this section “supplementary action”, in relation to a complaint, means action which, although not taken in pursuance of a direction under section 119(1), is taken in consequence of the findings of the BSC on the complaint.

## **121 Certain statements etc. protected by qualified privilege for purposes of defamation**

- (1) For the purposes of the law relating to defamation—
- (a) publication of any statement in the course of the consideration by the BSC of, and their adjudication on, a fairness complaint,
  - (b) publication by the BSC of directions under section 119(1) relating to a fairness complaint, or
  - (c) publication of a report of the BSC, so far as the report relates to fairness complaints,
- is privileged unless the publication is shown to be made with malice.
- (2) Nothing in subsection (1) shall be construed as limiting any privilege subsisting apart from that subsection.