

Ofcom Dispute Resolution Guidelines

Ofcom consultation on a new approach

1. Ofcom has published a consultation on its approach to dealing with disputes between communications providers which are referred to it under section 185 of the Communications Act.
2. This comes after a near 5-year lacuna in which guidelines existed only in draft.
3. The changes are intended to increase efficiency and simplify procedures, with the aim of making it easier for Ofcom to reach (hopefully) robust decisions in the challenging 4-month deadline.
4. There will be more formality and Ofcom clearly expects disputing parties to take on more of the burden themselves. So, the proposals include these:
 - a. There will be tri-partite meetings in the pre-dispute stages to assist in defining the scope of disputes (“Enquiry Phase Meeting” or EPM) - though it will not be a formal hearing as such;
 - b. Parties will be required to complete an EPM questionnaire to assist the smooth-running of that meeting;
 - c. Ofcom will get tough on information requests. We have no issue with this in principle, but parties will need to be ready to jump to Ofcom’s tune (particularly if BIS presses ahead with its plans to introduce harsher penalties for failing to respond to information requests);
 - d. There will be a new approach to dispute documentation, with Ofcom proposing to publish the original dispute and the parties’ submissions. (Nice idea in principle; we are not sure it’s the right approach in practice.)
5. Decisions, in future, will no longer be published in draft for comment; instead Ofcom plan to issue a summary of their provisional thinking. This could work but the proof of the pudding will be in the eating.
6. There will be no change (yet) on Ofcom’s approach to costs awards.
7. Our initial reaction is cautiously positive. There are some good ideas here. In one or two areas Ofcom might have gone further; and the proposals are hardly radical. However, overall, it looks directionally sound.
8. Areas for improvement: a different approach would work better on transparency. We think Ofcom should look more carefully at the exceptional circumstances in which the 4-month deadline could be extended. And there is a role for another tri-partite face-to-face session after the consultation on Ofcom’s provisional thinking.
9. Consultation responses are due by 11 February. Contact Paul Brisby for advice.