

For information

**Legislative Council Panel on
Information Technology and Broadcasting**

**The Broadcasting Authority's Complaint Handling Mechanism
and Yardsticks of Imposing Sanctions**

Purpose

This paper informs Members of the complaint handling mechanism and yardsticks of the Broadcasting Authority (BA) in imposing sanctions on broadcasters with respect to complaints about programme contents.

Background

2. The BA is the statutory independent regulator of the broadcasting sector, established under the Broadcasting Authority Ordinance (BAO) (Cap. 391). One of the functions of the BA is to secure proper standards of television and sound broadcasting programme contents that are acceptable to the community. Pursuant to the Broadcasting Ordinance (BO) (Cap. 562) and the BAO, the BA promulgated the Codes of Practice on programme standards (the Codes) for television and sound broadcasting services respectively¹.

3. According to the BAO, the BA shall appoint a Complaints Committee (BACC) consisting of not less than five members of the Authority and other persons as it deems fit.

4. Pursuant to section 11(1) of the BAO, the BA shall refer complaints about contravention of the programme standards as set out in the Codes to the BACC².

¹ Broadcasting licensees are required to comply with the Codes. Radio Television Hong Kong (RTHK), being a public broadcaster and a government department, has voluntarily agreed to comply with the Codes under the Memorandum of Understanding, first signed in 1995 and updated in 1999 between the Director of Broadcasting, the then Secretary for Information Technology and Broadcasting and the Chairman of the BA. However, the BA may not impose financial penalty on RTHK.

² Section 11(3) of the BAO, however, provides that the BA may refuse to refer to the Committee a complaint that is trivial or frivolous, or not made in writing. Under section 14(1) of the BAO, the BA has delegated the powers to refer complaints to the BACC to the Commissioner for Television and Entertainment Licensing (CTEL), the Principal Executive Officer of the BA.

The Codes

5. There is no pre-censorship of broadcast contents on television and radio. The editorial responsibility lies with broadcasters themselves. Under the complaint-driven approach, the Codes published by the BA serve as guidelines on proper content standards for the industry.

6. Under the BO, the BA must consult the licensees before any Code is approved, revised or withdrawn. The standard procedures for the approval/revision of a Code include the conduct of research on the subject and relevant regulatory practices; consultation with the broadcasters and the public (e.g. surveys, focus group meetings of members of the BA's Television and Radio Consultative Scheme³, consultation through the BA's website, consultation with relevant authorities, industry representatives and professional organizations); submission of draft Codes to its Codes of Practice Committee (BACPC) for deliberation and recommendation to the BA; BA's approval of the gazettal of the Codes; and BA's announcement of its approval/revision of the Codes in press release.

7. All meetings of the BACPC are open to the public and media. The existing Codes were drawn up in 2001 after an extensive public consultation exercise with the public and the broadcasting industry. The Legislative Council Panel on Information Technology and Broadcasting was also being briefed on the Codes before their promulgation.

8. The BA reviews the Codes regularly to ensure that they reflect the community standards and changes in audience expectations, provide adequate safeguards for children and youths, and facilitate the broadcasters' needs without imposing unnecessary regulatory burden on them.

³ The territory-wide consultative scheme on broadcasting standards was introduced in 1982. The objectives of the scheme are to collect views on topics to be reviewed by the BACPC and to collect feedback on the decisions of complaint cases through regular discussion sessions in order to help gauge public standards on broadcast materials. The scheme comprises about 540 members recruited based on the population characteristics of the 18 districts supplied by the Census and Statistics Department.

Mechanism of Handling Complaints

9. The BA handles complaints about broadcast programme contents according to the flow chart at **Annex A**. The BA will not deal with personal comments on programmes or complaints that fall outside its jurisdictions. Where appropriate, the subject matter might be referred to the concerned broadcaster for reference.

10. For complaints that concern contravention of the Codes, the BA will start investigation. This involves review of the broadcast material, seeking the concerned broadcaster's representations, and inviting expert advice if necessary. If the broadcast contents under complaint are not found by CTEL to be prima facie in contravention of the Codes, the complaint will be discharged as unsubstantiated. If the complaint is a straightforward case but about trivial breach of the Codes (e.g. occasional wrong usage of Chinese characters in subtitles), CTEL will deal with them as minor breaches under delegated authority and advise the concerned broadcaster to avoid recurrence of the minor lapse. All complaints dealt with by CTEL are submitted in a monthly report to the BACC and ultimately to the BA for its information.

11. Otherwise, the complaint will be referred by CTEL to the BACC for deliberation. A complainant who is aggrieved by CTEL's decision on his/her complaint may also appeal to the BA for a review of the decision. All appeal cases on CTEL's decisions on public complaints will be referred to the Committee for review. The BACC will notify the concerned broadcaster of the substance of the complaint and invite its representation, either orally and/or in writing, to the BACC. After consideration, the BACC will make recommendation, and the proposed sanction if applicable, to the BA.

12. If the BA's provisional finding is that there is likely to be a contravention, the concerned broadcaster will be invited to make oral/written representation on the provisional finding and the proposed sanction. After deliberation of the representation, the BA will come to a final decision.

Sanctions

13. In considering the level of sanction to be imposed, the BA will take into account factors including the nature and severity of the breach, the

frequency of the breach, mitigating factors, precedent cases and any other relevant circumstances.

14. After considering the above factors, the BA may take the following actions:

- (a) to issue a minor breach to the broadcaster concerned where the contravention is minor;
- (b) to advise or strongly advise the broadcaster to observe more carefully the relevant provisions of the Codes;
- (c) to warn or seriously warn the broadcaster against recurrence of contravention;
- (d) to impose a financial penalty on the broadcaster⁴;
- (e) to direct the broadcaster to include in its service a correction and/or apology in such form and manner as specified by the BA; and
- (f) to suspend or revoke a licence (for domestic free television programme service licences, domestic pay television programme service licences and sound broadcasting licences, the BA may recommend the Chief Executive in Council to revoke the licence after an inquiry) having regard to the number of occasions and the gravity of the breach.⁵

Appeal

15. A licensee who is aggrieved by the decision of the BA may appeal by way of petition to the Chief Executive in Council.

⁴ Under the Broadcasting Ordinance (BO), the financial penalties for television programme service licensees shall not exceed \$200,000 for the first occasion on which a penalty is imposed; \$400,000 for the second occasion and \$1 million for any subsequent occasion on which a penalty is imposed. For sound broadcasting licensees, the financial penalties are prescribed shall not exceed \$80,000 for the first occasion, \$200,000 for the second occasion and \$400,000 for any subsequent occasion on which a penalty is imposed. The BA may not impose financial penalty on RTHK.

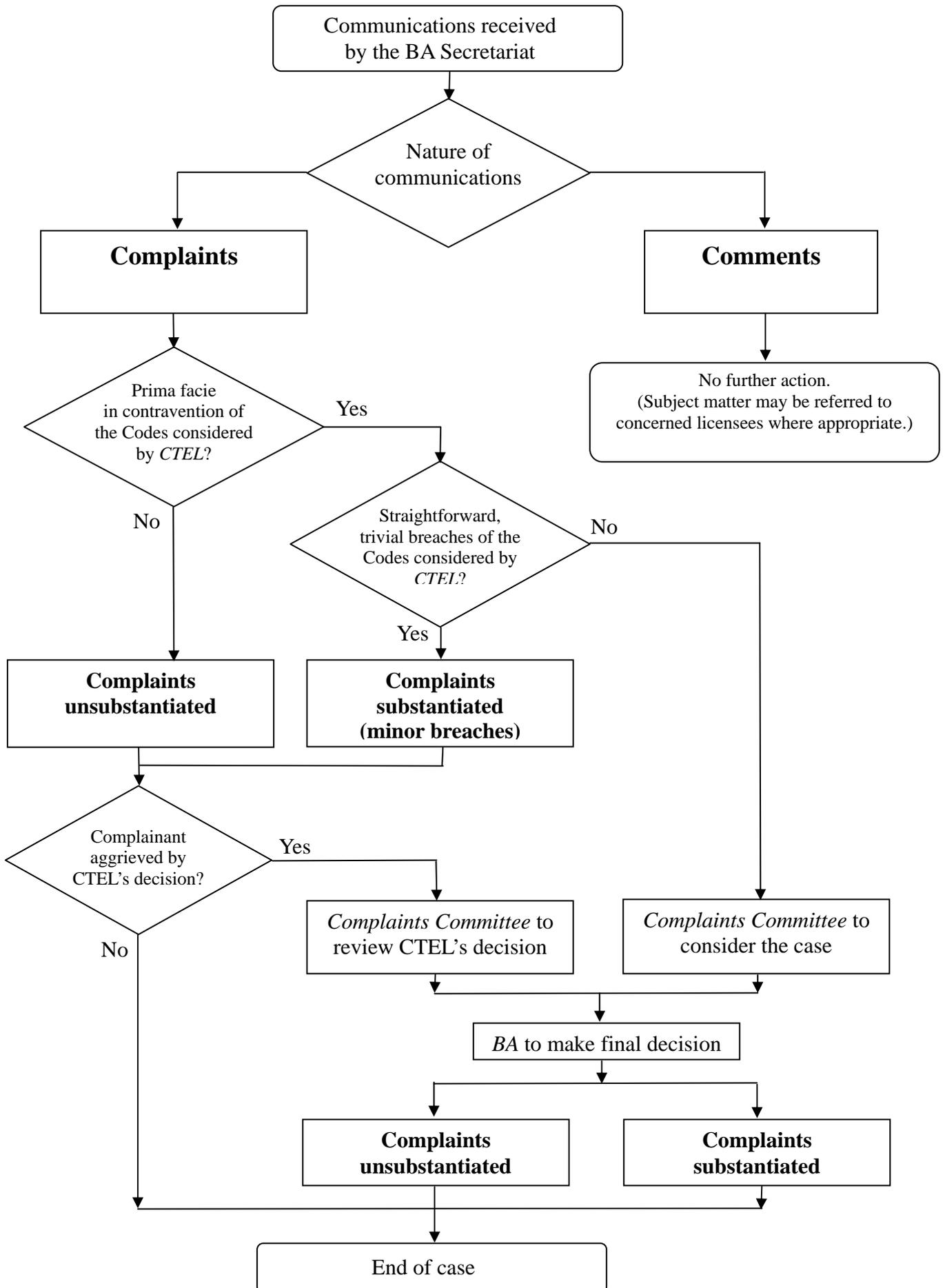
⁵ RTHK does not hold a television programme service or sound broadcasting licence and is therefore not subject to this action.

Complaint Figures

16. During the period 1 January 2006 to 31 December 2006, the BA has processed 4908 complaints relating to 1118 cases. A breakdown of the results of these complaints is at **Annex B**. During this period, the BA has issued 26 pieces of advice, 6 pieces of strong advice, 4 warnings and, one serious warning, imposed 3 financial penalties on broadcasters and issued one direction to require a broadcaster to include in its service an apology for breaches of the licence conditions and Codes.

Television and Entertainment Licensing Authority
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Flow chart on handling complaints about broadcast programmes



**Complaints Processed by the Broadcasting Authority
Complaints Committee and Commissioner for
Television and Entertainment Licensing (CTEL)**

(1 January 2006 to 31 December 2006)

	Within Section 11(1) of BAO				Outside Section (11) of BAO	Total
	Substantiated		Unsubstantiated			
	Complaints Committee	CTEL	Complaints Committee	CTEL	CTEL	
No. of Cases	32	59	5	767	255	1118
No. of Complaints	362	71	43	2524	1908	4908

Total : Complaints Committee	37 cases / 405 complaints
CTEL	1081 cases / 4503 complaints