

CONSUMER UNIT HANDBOOK

Watchdog

OLD DOGS
NEW TRICKS

ROGUE
TRADERS

WHISTLE
BLOWER

SEPTEMBER 2006
- RELEVANT EXCERPTS ONLY

INTRODUCTION

The Consumer Unit's journalism has gone from strength to strength, which is what makes it an exciting place to work. But we can be contentious and hard-hitting, and this can put companies and/or individuals on their guard. Every fact we broadcast can be placed under the highest scrutiny. So too can every exchange we have with an individual or company during the production period. Nowadays, company spokesmen and lawyers are as familiar with the BBC's Editorial Guidelines as we are, and will not hesitate to quote them extensively.

A company may make fourteen official complaints about us. Yet if just one is upheld we have to broadcast an apology. So we have to get it right. We have to be confident we can substantiate every claim we make. Therefore it is essential that every member of the team adopts a professional and well-disciplined approach to work. The highest standards of research and recording of research are paramount. The Watchdog database provides us with an unrivalled source of information, but we have to manage that information and respect our obligations to protect personal data...more details on this in the section on the use of the database.

Decisions about secret recordings, doorstepping and the use of whistleblowers have to be carefully considered. We must reflect the view of the companies we report on in what we broadcast about them.

Showing on screen a short, uncontroversial shot of a car or computer that isn't the one you're talking about may on the face of it seem harmless enough. In fact it could lead to Ofcom upholding a complaint and the programme being publicly criticised for its methods. NEVER, EVER, BE TEMPTED TO CUT CORNERS!

The main defence against complaints about our work is fairness and accuracy. If what we say is the truth there is nothing the most hostile company can do. If what we say is fair there is likely to be little scope for comeback. Working for Consumer Unit programmes demands the highest standard of BBC journalism.

We are governed by the BBC Editorial Guidelines and Ofcom. You need a thorough working knowledge of the guidelines, which were updated after the Neil Report in the wake of the Hutton Enquiry. The Editorial Guidelines also include the Ofcom Broadcasting Code in full. Everyone should have a copy of the guidelines (a red and grey book) and the most up to date version will always be on the BBC website at www.bbc.co.uk/editorialguidelines What follows is designed to help you meet these exacting standards, as well as to help you to settle in. It's a great place to work. Enjoy! And remember, no one knows everything.... if in doubt, shout!

[]
Editor, Consumer Programmes

RESEARCH

Okay, we've identified a *Watchdog* story. Now we need to make sure the facts stand up. Because so many *Watchdog* reports potentially risk legal action and/or official complaints to Ofcom, it is vital that we record all our research clearly, neatly and accurately. This has been reinforced recently by the recommendations of the Neil Report, which you can view, along with producer guidelines, via Gateway.

We are always honest and open about our dealings with contributors and companies. That said, during the course of an investigation, you may have to call or visit a company as a "customer". And there are circumstances, if we are investigating criminal or anti-social behaviour, where a greater level of deception may be called for. Always discuss this and refer up.

Gathering Evidence - The Watchdog "Definite Dozen"

Just because Watchdog champions the ordinary consumer doesn't mean the programme can afford to take for granted that what our viewers tell us is the cast iron truth. They may exaggerate what happens to them because they're trying to get compensation. They may not be able to remember the exact sequence of events. They may have misunderstood what was said to them. We may be restricted in what we can say about what has happened to them if they've decided to go to court.

We need to question our informants just as closely as we question the company/organisation they are complaining about. We need to build up an accurate sequence of events to determine whether we have enough evidence to run a story. It's all to do with ensuring our reporting is fair and our research is thorough.

WHISTLEBLOWERS

These are people who want to expose bad practice, poor morale or maybe incompetence within a company they are - or were - working for. We get a fair few whistleblowers coming forward via the Watchdog database. Their claims can seem like dynamite, but tread carefully. This warning is based on experience. Whistleblowers may not be who they say they are. They may not have left the company, they may have been sacked, they may bear a grudge. Here are some tips....

Treat a whistleblower with scepticism. Be nice, but be questioning. Meet them. Why have they come forward? Who are they? How long did they work at the company? Why did they leave? Do they have an axe to grind with the company? Early on, you need to be up front and ask something like: "What's the worst the company is going to say about you?"

Make sure they are who they say

- check electoral role against their address
- check they exist on paper

Get from them proof of employment at the company

- Payslips, contracts
- Resignation/dismissal letters etc proof they left in the way they did.

Any colleagues prepared to support what they are saying or act as character referees.

Being Fair to Complainants

NEVER

Agree to pay a complainant without checking that it's okay to do so. Legitimate out-of-pocket expenses are allowed.

Agree to let them have any say about what is finally included and what is left out of a report.

Ask them to do anything they don't want to do.

Agree to let them see a film before transmission.

ALWAYS

Take care to explain the direction of your story and what you're asking them to do.

Explain that the editing process can be cruel and some interviews do have to be left out in the final cut.

Avoid promising a result - some money back or whatever.

PAYMENT

Watchdog does not pay participants. The only exceptions are genuine out-of-pocket expenses e.g. travel, childcare, loss of earnings or facility fee.

We sometimes pay experts. Don't leave this to chance. Discuss with your Unit Manager or Production Manager and make sure you are clear with the contributor.

Further Evidence

Use the BBC's intranet research resources or check research engines on the internet to try to establish whether anything has appeared in the national or specialist press about the particular issue, related issues or about the company concerned in general.

Speak to any other consumers you can make contact with who can corroborate what you have already been told e.g. other people on the same cruise. Use them to test what your first case has said. Make sure you can use the Watchdog computerised log of calls and e-mails. There may be lots of similar cases there.

Speak to the trading standards department which covers the area of the headquarters of the company - they may have received complaints too.

You may need to speak to other consumer specialists - the Consumers Association, the National Consumer Council, the National Association of Citizens Advice Bureaux and You and Yours to discover whether they can help corroborate what the viewer has told you, or whether they can put it into context.

Speak to experts in the field to see if they can shed any light on why such things are happening...but do be wary.

WATCHDOG DATABASE

Data Protection

What is the Data Protection Act?

The Data Protection Act has eight basic rules about handling personal information:

- 1) Data must be fairly and lawfully collected and used.
- 2) Data must be accessed for the limited purposes explained to the individual
- 3) Data must be adequate, relevant and not excessive for the purpose for which they've been collected
- 4) Data must be kept accurate and up to date
- 5) Data must be not kept for longer than necessary in relation to the purpose for which they were collected
- 6) Data must be processed in accordance with subject's rights
- 7) Data must be kept secure and be securely destroyed if no longer needed
- 8) Data must not be transferred to outside the EU

The database will time out after a while of inactivity which improves security, but please remember to close the application before going for lunch or if you're leaving your desk for any length of time.

You must NOT pass on any information stored on the database to people outside the consumer unit. All requests for information must go through [Editor]. If permission is given, we still need to contact the person who phoned or emailed us first to get their permission BEFORE passing on their personal details.

The Data Protection Act as it affects Forward Planning

Forward Planning are the keepers of this data and the buck stops here if the Data Protection Act is broken. You can find further Data Protection Act information on gateway here:

<http://technology.gateway.bbc.co.uk/dpa/documents/protectdata.pdf>

We have to be able to delete people who request deletion from the database. If anyone requests deletion please contact [] on [].

Personal data should not be kept for too long.

People can request a copy of their personal data. It is a requirement of the Data Protection Act that the BBC responds to anyone requesting their data within 40 days. Requests are handled by the Information Policy & Compliance Department () and if you receive a request, you must forward it to them immediately to deal with.

LEGAL CHECKING

All scripts must be checked by the programme lawyer before filming.

Defamation

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Contempt

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Breach of Confidence

This type of action is usually taken by someone trying to prevent a programme being transmitted. It applies when the programme makes use of information of a confidential nature such as financial information circulated to very few people within a company, private correspondence or memos or e-mails. It is a defence to this type of action to show that there is a sound public interest in publishing (and public interest is to be distinguished from what is interesting to the public). It is also worth noting that it may be possible for a court to order that the source of the information is disclosed, making it difficult to *guarantee* anonymity.

Copyright

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Trespass

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As stated, the above is a very general overview of the more common legal issues that arise and you should always keep your lawyer informed if you are working on a story likely to give rise to legal problems (that generally covers most Watchdog stories).

Consult the legal team as early as possible - before you go out filming.

YOU HAVE A COPY OF THE EDITORIAL GUIDELINES. READ THEM. IT IS YOUR RESPONSIBILITY TO BE FULLY BRIEFED.

SECRET FILMING

All programmes in the Consumer Unit must follow these steps when applying to do secret filming.

All requests for secret filming must in the first instance be discussed and approved with your series producer or Editor. You will need to fill in a secret filming application form. It may be the case that permission to secretly film can be approved within the unit by [Editor]. In more complicated instances, you will need to refer to Editorial Policy.

Copies of all signed forms are kept by the Editor's PA.

What determines whether you'll get permission?

1. You need EVIDENCE of "criminal or seriously anti-social behaviour."
Secret recording as a "fishing expedition" to gather evidence to support a suspicion of wrong-doing is not allowed.
2. You have to show that an approach for open filming would fail or would not show the activity you wish to reveal.
3. The camera must be attended and not just abandoned as a bugging device.
The only way this will be allowed is if you have clear evidence of "serious crime."

See the BBC Producer Guidelines for further evidence.

Recording Phone Calls

If you're intending to broadcast a recorded phone call the same rules apply as for secret filming. You need evidence of serious wrong-doing and some evidence that an open approach for an interview would fail.

You don't need permission to record phone calls for research purposes but permission to broadcast calls originally made for research can only be granted by the **Controller, Editorial Policy**, who will only give approval in "exceptional circumstances."

We apply exactly the same principles when we are offered any secret recordings carried out by someone who does not work for the BBC.

COMPLAINTS

Complaints about items we have broadcast come in many guises. It may be an individual viewer taking issue about the way we incidentally and quite mistakenly maligned the town of Hartlepool, to a line-by-line rebuttal of a report from the company concerned. Complaints may come in the form of a polite direct phone call or a letter sent direct to the Director General or the Board of Governors. They may be from highly knowledgeable experts who feel we've over-simplified their speciality or a managing director whose brother-in-law was watching the programme while getting the kids ready for bed and is 60 per cent certain the family firm was criticised.

Like all disputes, it is best if complaints about Watchdog can be resolved informally, amicably and without resort to the formal procedures which can be dispiriting and highly time-consuming. If you receive a complaint by phone, listen politely and answer courteously.

Don't lose your temper or argue aggressively and don't be afraid to "agree to differ." Similarly if someone writes to you, draft a polite reply, even if you profoundly disagree with the criticism being levelled at your item.

Always check with your editor/series producer, and possibly the legal department or staff at the Programme Complaints Unit.

If your complainant remains dissatisfied and seems determined to pursue it further, you can suggest that they contact the Programme Complaints Unit who can arbitrate on some disputes.

PROGRAMME COMPLAINTS UNIT

What is it?

The PCU is the BBC's own internal mechanism for dealing with around 1,200 "serious" complaints a year which relate to broadcasting standards laid out in the BBC Producer Guidelines.

Complaints to the Director General and the Board of Governors are either passed to BBC Information or replied to on the basis of a briefing from the programme area in the first instance. If complainants are dissatisfied, and if the complaint is within the remit for "serious breaches of editorial standards", they may be referred on to PCU. Viewers and listeners are told that the PCU is where they should direct serious complaints about BBC programmes.

Programme staff can suggest that the unit act as arbitrator in cases where complainants are dissatisfied with the responses they have been given. But check first that the complaint falls within the unit's remit. If a complaint is directed at a programme *and* the PCU, the unit will only become involved once the programme has failed to satisfy the complainant.

The PCU also represents the BBC in complaints brought via Ofcom.

Although it is a BBC unit, it is ***independent*** though at present it refuses 90 per cent of complaints.

OFCOM

What is OFCOM?

The new super-regulator for the whole communications sector. It merges the functions of the Independent Television Commission, the Broadcasting Standards Commission, Ofcom, The Radio Authority and the Radiocommunications Agency.

Who is on it?

Members are from a variety of backgrounds - journalists, lawyers, civil servants, churchmen, academics and business people.

OFCOM and the BBC

- Ofcom is now regulating the content of all BBC radio and television
- Ofcom is applying the existing Broadcasting Standards Commission codes until they draw up their own more extensive codes
- Ofcom has much wider powers than the BSC and will have the option of fining the BBC and other broadcasters up to £250,000 for serious or repeated breaches of codes.
- The BBC ensures high ethical and editorial standards by adhering to the Producers' Guidelines, which incorporate the BSC codes
- Clear adherence to the BBC Producers' Guidelines will ensure that appropriate standards are maintained.
- The BBC needs to demonstrate it has a clear compliance process so forms will need to be completed for all recorded output.

What does the OFCOM rule on?

OFCOM deals with two kind of complaints: *standards*, which encompass taste, decency and the portrayal of sex and violence, plus *fairness* which takes in impartiality and privacy. It usually only investigates after a formal complaint has been made. When it comes to *standards* any viewer or listener can complain. *Fairness* complaints must come from the subject of the report or someone with a direct interest in the subject.

Watchdog is most liable to receive complaints about the fairness of our journalism from the company we have been reporting on.

How does OFCOM investigate?

Four documents form the basis of the inquiry. The complainant will submit details of their objections to the story broadcast. If it falls into the OFCOM remit, the BBC will be asked to respond. The Programme Complaints Unit is responsible for compiling our riposte but the story researcher, producer, programme editor, [Editor] and the lawyer will be heavily involved.

The complainant then responds to our response and we then get chance for a final say before a hearing at which a decision on whether to uphold the complaint is taken. Not all complaints do lead to a hearing though most do. Both sides are represented, ourselves by the PCU and members of the programme team.

At a hearing both sides make an opening statement, then the commission panel will ask questions of both sides, then each side sums up, with the complainant having the last word. We receive the verdict about a month later. A typical hearing lasts two hours.

How does OFCOM decide whether to uphold a complaint?

It has drawn up a code on fairness although this is in the process of being redrafted. The BBC Producer Guidelines are largely based on the OFCOM code. Adhering to the guidelines and raising any doubts with your editor should keep you on track.

It's worth bearing in mind that the code is open to interpretation. For instance it says companies who are being criticised should be given an "appropriate and timely" opportunity to respond - without giving any indication of what that means in practice.

It's also important to bear in mind that a company may submit fourteen complaints and only one may be upheld. Even so it will still be regarded as a successful complaint.

What happens if OFCOM upholds a complaint?

1. We have to broadcast a long account of the finding.
2. The finding is published and circulated to the newspapers who can - and in the past have - run headlines like "TV Watchdog in the doghouse"

OFCOM COMPLIANCE – GUIDANCE FOR F&L LIVE PROGRAMMES

- Given that it is not possible to ensure compliance of live programmes in advance of transmission, programmes considered live do not normally have to complete a compliance form on the Gateway Compliance Manager site.
- Instead programme teams are expected to be fully conversant with this guidance document and with current Producer Guidelines. When in doubt they should follow a referral process which has been clearly defined before transmission.
- A copy of this guidance should be kept in galleries and scanners ahead of all transmissions along with a chain of referral to include up to date contact numbers.

Statement of Best Practice

BBC F&L's process to guarantee Ofcom compliance of live programmes involves:

- maximising the **editorial knowledge** of programme makers, journalists and presenters to help them make the best editorial judgements in a live situation.
- ensuring that all BBC F&L staff adhere to a clearly communicated **referral procedure**.
- maintaining an easily accessible and dedicated **F&L Editorial Policy team** to advise F&L staff on a day to day basis and keep them up to date with Editorial Policy issues.
- ensuring that programme makers have effective **broadcast procedures** in place which minimise the potential for problems during transmission.
- ensuring that programme makers communicate properly with **presentation** and that there is an appropriate **standby programme** available.
- ensuring that staff responsible for live programmes have effective **briefing procedures** for both presenters and contributors.
- compliance with guidelines on Sponsorship and product prominence.

What to do if things go wrong on air

Above all **act promptly**

Apologise as soon as possible after the event

Distance the BBC from defamatory or offensive remarks.

If necessary bring the item to a **close or move sound and/or vision to a different camera**.

Hand back to the network (presentation) in the event of a major disaster or terrorist attack

Inform the Head of Editorial Policy F&L or the Compliance Manager F&L within 24 hours.

Keep a recording of the programme for at least 90 days

Who to ask for advice

- Live Programme Editors can refer to the BBC's **Editorial Policy Unit** during transmission if necessary. The duty adviser is on ext. Head of Editorial Policy F&L is. The F&L Compliance Manager is. Advice is available 24 hours a day 365 days a year.

