

## **EDITORIAL POLICY GUIDANCE NOTE**

### **ACCESS AGREEMENTS AND INDEMNITY FORMS**

(Last updated: October 2010)

#### **EDITORIAL GUIDELINES ISSUES**

*This guidance note should be considered in conjunction with the following Editorial Guidelines:*

- **Fairness and Consent**  
See Editorial Guidelines Section 6 Fairness: Contributors and Informed Consent  
Editorial Guidelines Section 6 Fairness: Access Agreements
- **Privacy**  
See Editorial Guidelines Section 7 Privacy.
- **Editorial Integrity**  
See Editorial Guidelines Section 14: Editorial Integrity and Independence
- **Re-use and Reversioning**  
See Editorial Guidelines Section 13 Re-use and Reversioning: Requests for BBC Material from Third Parties

#### **SUMMARY OF MAIN POINTS**

- Access agreements can be a useful way of confirming and formalising the terms under which consent for access or other contributions is granted, avoiding time consuming disputes later in the production process. However, care is needed to avoid compromising editorial integrity.
- It is wise to discuss access terms and any requirement for a formal agreement early in the production process to allow time for negotiation.
- The BBC does not offer the opportunity for contributors to see or hear programmes prior to transmission, save in exceptional circumstances. Any viewing or listening rights provided to contributors or facilitating organisations should not include a right to demand changes.
- Any access clauses concerning consent of contributors should be in keeping with the BBC's Editorial Guidelines, balancing the individual's right to privacy with the BBC's (and others') right to freedom of expression in the public interest.
- Credits and links should only be given in keeping with the BBC's Editorial Guidelines and Credits Guidelines and must remain under our editorial control.

- An inappropriately worded indemnity clause or form could result in the BBC being held liable for actions outside its control or responsibility. Editorial Policy and/or Programme Legal Advice and/or the Insurance Servi
- Advice on access agreements and indemnity forms is available from Editorial Policy and Programme Legal Advice. When access agreements cover non-editorial areas, including rights, re-use and facility fees, the relevant Legal and Business Affairs department should be consulted.

## **GUIDANCE IN FULL**

- **Introduction**
- **Indemnity Forms**
  - **Police Forces in England and Wales**
  - **Other Organisations**
- **Access Agreements**
- **Advice**

### **Introduction**

Many organisations, ranging from police forces to schools and hospitals to department stores require the BBC to enter into written agreements in return for facilitating access to their premises or staff. This can be a useful way of confirming and formalising the terms under which consent for access or other contributions is granted, avoiding time consuming disputes later in the production process.

However, care is needed to avoid compromising editorial integrity. This may be threatened by stipulations over what can and can't be recorded, the right to call a halt to recording, and – most notably - rights over the final edit. There is often temptation to believe that a programme will be made in a spirit of co-operation which will see both the BBC and the access-provider through any disagreements over content. This is often what happens in practice but it should not be relied upon – if the relationship breaks down, a badly worded agreement can lead to a loss of editorial control.

The contract or agreement may take the form of an Indemnity, which simply states the BBC's legal liability to the organisation providing facilities to the BBC, or it may be an access agreement covering a broad range of rights and obligations for both parties.

### **Indemnity Forms**

Indemnity forms are the legal agreements by which an organisation providing a facility to the BBC clarifies liability if something goes wrong – either during recording and its associated activity, or as a result of the broadcast. They may be stand-alone documents or an indemnity clause within a broader Access Agreement. An inappropriately worded indemnity could result in the BBC being held liable for actions outside its control or responsibility. Editorial

Policy and/or Programme Legal Advice and/or the Insurance Services Department may be consulted before agreeing an indemnity clause.

***Police Forces in England and Wales***

The Association of Chief Police Officers has a standard Indemnity Form that it recommends for use by all Police Forces in England and Wales when they are accompanied by media organisations. The wording of this form has been agreed with the BBC. It is acceptable to sign such a form provided that the wording is identical to the agreed version available on the Editorial Guidelines website. (see notes below on checking the wording).

In addition, the BBC has agreed the wording of a separate and distinct indemnity/access form with Kent Police. Again, it is acceptable for programme makers and journalists to sign a form offered by Kent Police, provided it is identical to the agreed version available on the Editorial Guidelines website.

Notes on ACPO agreed form:

When ensuring an indemnity form matches the ACPO agreed version, particular attention should be given to the wording of clause 3 and the declaration at the end of the Note to Media Representatives.

Although this standard form is recommended by ACPO as good practice and has also been adopted by the Metropolitan Police, other individual forces are not obliged to use it and may still prefer to issue their own documents. With the exception of the Kent force, alternative forms are unlikely to have been agreed with the BBC and you will need to be sure that they are acceptable before signing (see guidance for "Other Organisations" below). If a force presents you with an indemnity form or filming agreement that has particular difficulties, you may offer the standard ACPO form as a substitute.

### **Other Organisations**

The BBC has not agreed a standard wording for Indemnity Forms or clauses with any other organisation. However, it is reasonable to agree indemnity clauses on a case-by-case basis provided they do not over-state the BBC's liability.

Programme makers need to ensure that the BBC is accepting liability only for problems its employees and agents have caused directly – either through their actions or through negligence. The BBC should not be left potentially liable for claims when it has had no direct involvement in whatever has gone wrong.

It is not acceptable for the BBC to agree to be liable for the actions or negligence of either the organisation providing the facility, or any other person with no relationship to the BBC. Similarly, the BBC should ensure that the organisation providing the facility does not try to exempt itself from liability for negligence.

Clauses seeking to regulate or restrict the BBC's responsibilities in relation to privacy or other Human Rights issues should not be agreed unless they either strike an appropriate balance between the rights of privacy (or other human rights) and the BBC's right to freedom of expression, or they otherwise maintain the BBC's ability to make its own judgements as to what may be included in the programme.

Each time a BBC programme signs an Indemnity Form with an undesirable clause, it risks being seen as setting a precedent, making it harder to argue against such clauses in the future. So, Programme Legal Advice and Editorial Policy should be consulted, prior to signing, if any doubt exists about the wording of an indemnity form or clause.

### **Access Agreements**

Access agreements (sometimes called Recording, Filming or Location Agreements) formalise the terms and conditions under which an organisation is prepared to grant a facility to programme makers (such as tag-along raids or any observational recording, use of

pictures/films/recordings, pre-trial briefings etc.). At present, the BBC has not negotiated any standardised wording of such an agreement with any organisation.

We must not sign access agreements that surrender the BBC's editorial control, or otherwise compromise our editorial integrity. Editorial control requires the BBC or Independents working for the BBC to retain the right to record and broadcast material as freely as possible, as well as to edit accurately, impartially and fairly.

Access agreements often include a clause stating that the BBC retains editorial control. However, this may provide insufficient protection if we are signing away specific rights to determine the content elsewhere.

The following matters, commonly requested in access agreements, have the potential to compromise the editorial integrity of individual programmes and/or the BBC. Care is required when agreeing the terms of access.

#### Viewing/Listening Rights

The BBC does not offer the opportunity for contributors to see or hear programmes prior to transmission, save in exceptional circumstances. This may be to allow an organisation working as a 'collaborative contributor' (see Editorial Policy Guidance: Informed Consent) to offer advice (for example, if the subject matter has security or safety implications, or is otherwise delicate), or to be aware of the programme's content so that they can prepare for inquiries a programme may generate from other media.

Viewing or listening rights may also be offered when dealing with vulnerable contributors.

(See Editorial Guidelines Section 6 Fairness, Contributors and Consent).

#### Veto of Material

Any viewing or listening rights provided to contributors or facilitating organisations should not include a right to demand changes. It is acceptable to allow for representations to be made on any matters of concern (such as factual accuracy, impartiality or fairness) and for the programme makers to agree to give due consideration to any comments received, whilst operating to the standards of the Editorial Guidelines. However, editorial control and the decision on whether or not to change the programme should remain with the BBC.

Advice is available from Editorial Policy on any rare exceptions to this approach, prior to signing an access agreement. For example, it may be acceptable, in exceptional circumstances, to grant an organisation the right to request the removal of material that jeopardises security, safety or legitimate covert operations. However, any such exceptions require careful wording to ensure they do not allow for undue influence on editorial content which could undermine the integrity of the programme.

It is normally acceptable to sign an agreement that the BBC will act in accordance with the Editorial Guidelines (whether in whole or in part), or that the programme will meet standards in the Editorial Guidelines – for example, that the programme will be accurate or fair. Indeed, statements that reflect our Editorial Guidelines frequently meet many of the concerns of organisations providing access. Similarly, we may sign an agreement to act within the requirements of the laws of contempt. However, the crucial point is that the agreement should not pass to a third party the right to determine when those legal or editorial standards have been met. So, for example, access agreements should not normally allow organisations the right to veto material they solely determine to be inaccurate or that they believe may influence any pending legal proceedings.

Generally, we should resist attempts to include in access agreements matters that are essentially between the BBC or programme makers and individuals or organisations that are not party to the agreement – such as issues of contempt, trespass or consent of third parties. In the event that they are included, we should avoid making commitments that exceed our legal and regulatory obligations, or the high standards established in the Editorial Guidelines.

#### Gathering Material

We need to retain editorial control to ensure that the audience can be given an accurate and impartial view of any organisation or individual who has allowed us to film or record. Access clauses which give contributors the right to demand that we stop recording at any time are not normally acceptable. Security or other understandable concerns that may arise from material we have gathered can usually be addressed in discussion with the organisation at (or before) the final edit stage. On rare exceptions when “stop recording” clauses are acceptable, they should normally be limited to specific circumstances and allow for the decision to be explained as close as possible to the time the instruction is given.

Any access clauses concerning consent of contributors should be in keeping with the BBC’s Editorial Guidelines, balancing the individual’s right to privacy with the BBC’s (and others’) right to freedom of expression in the public interest. So, we will normally seek the consent of people who contribute to our output, however people recorded clearly committing an offence or behaving in an anti-social manner in a public place will not normally be asked for consent.

(See Editorial Guidelines Section 6 Fairness, Contributors and Consent: Contributors and Informed Consent)

#### Credits and Links

Credits and links should only be given in keeping with the BBC’s Editorial Guidelines and Credits Guidelines and must remain under our editorial control.

(See Editorial Guidelines Section 14: Editorial Integrity and Independence from External Interests)

#### Transmitted and Untransmitted Material

We retain the rights in our material. Although it is usually acceptable to agree to supply copies of the transmitted programme to an organisation providing access, it should normally be specified that this is for private rather than commercial use. Copies should normally only be supplied after transmission.

Access agreements should not require the BBC to supply untransmitted material.  
(See Editorial Guidelines Section 13 Re-Use and Reversioning: Requests for BBC Material from Third Parties)

### Arbitration

In the event of contractual disputes arising from an access agreement, some organisations will seek to oblige the BBC to participate in independent arbitration. Subject to the advice of Legal and Business Affairs, this may be an acceptable and cost-effective means of dispute resolution for the commercial aspects of a contract. However, any commitment to independent arbitration must be restricted so that it does not include disputes over clauses relating to the editorial content of the programme. Any failure to secure such a restriction could effectively hand final editorial control of a programme to a third party arbitrator – often with no right of appeal for the BBC.

In addition to the issues outlined above, there are many other conditions that may give cause for concern if imposed upon the BBC in return for access. In particular, attention should be paid to any indemnity clause. (See above: Indemnity Forms). If unacceptable access terms are insisted upon we should withdraw from the project.

### **Advice**

Advice is available from Editorial Policy and Programme Legal Advice.

When access agreements cover non-editorial areas, including rights, re-use and facility fees, the relevant Legal and Business Affairs department should be consulted.

Access agreements are becoming increasingly common. Organisations such as the police, MOD customs, prisons and the Royal Household will nearly always require them when providing substantial or significant facilities. It is sensible to ask for them early to allow time for negotiation, rather than risk them being issued just before recording is due to begin.

Similarly, advice should be sought from Editorial Policy, Programme Legal Advice or Legal and Business Affairs, as appropriate, as early as possible and before any commitments are made to the contract or the production.