

EDITORIAL POLICY GUIDANCE NOTE INVESTIGATIONS

(Last updated: September 2011)

EDITORIAL GUIDELINES ISSUES

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

- **Reporting Crime and Anti-Social Behaviour**
See Editorial Guidelines Section 8 Reporting Crime and Anti-Social Behaviour
- **Privacy**
See Editorial Guidelines Section 7 Privacy.
- **Fairness, Contributors and Consent**
See Editorial Guidelines Section 6 Fairness, Contributors and Consent
- **Accuracy**
See Editorial Guidelines Section 3 Accuracy
- **War, Terror and Emergencies**
See Editorial Guidelines Section 11 War, Terror and Emergencies: Hostile Environments, High Risk Activities and Events

*In addition, the **Editorial Policy Guidance Notes on Secret Recording and Right of Reply** may also be relevant.*

SUMMARY OF MAIN POINTS

- Any proposal to undertake an investigation into crime or serious anti-social behaviour must be referred to a senior editorial figure or, for independents, to the commissioning editor. Normally, there will be prima facie evidence of the behaviour to be revealed (or intention to carry out the behaviour) before the BBC will use secret recording as an investigative tool.
- Before any undercover work begins, appropriate members of the production team should be aware of all relevant Editorial Guidelines and guidance, practices to be followed when using secret filming equipment, how to carry out filming in such a way that the footage and its evidential value can be verified by the production team, the contemporaneous note-taking and record keeping required, and legal and safety considerations.

- Accurate and reliable note-taking is an essential and prime journalistic craft; it can also be crucial to protecting the reputation of an investigative programme, its production team and the BBC. When filmed evidence is later disputed by those under investigation, records and notes documenting what has been captured on camera, how it was filmed and any relevant surrounding events can be an important tool for validating the filming.
- It is important to think through possible scenarios and dilemmas that may be faced by an undercover operative in advance and draw up protocols on how to proceed. At all times, we need to balance the requirements of the investigation with our responsibilities to the public and others. We should ensure that the public interest in our journalism is not outweighed by public concern about any harm that may have been caused by our methods.
- If the parameters of the investigation shift significantly during production, this should be confirmed and agreed with the senior editorial figure and discussed as required with Editorial Policy. It may be necessary to go through some of the initial procedures again to ensure the refocused investigation still has the necessary prima facie evidence and public interest.
- When making use of evidence from whistleblowers, it is important to consider any ulterior motives they might have, particularly if they no longer work for the organisation or company concerned and their claims could be discredited by the manner of their dismissal. Whistleblowers should not normally receive any payment or other inducement for their involvement.
- Throughout the editing process, it is important to ensure the finished programme reflects the evidence fairly and accurately, taking account of the context in any which secretly recorded incidents took place.
- When the allegations to be made in the film have been identified, they should be put to the individual, organisation or company concerned for a response.

GUIDANCE IN FULL

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Introduction

The term 'Investigation' can be applied to many types of journalistic output, designed to shed light on a matter of public interest. Many programmes may include elements of investigation. However, this guidance is confined to larger-scale investigations that scrutinise an individual, groups of individuals, a business or other organisations to reveal serious anti-social behaviour or crime, with a significant element of undercover work (and usually ongoing use of secret recording) central to the evidence-gathering - particularly where an individual may be sent undercover to work within or otherwise infiltrate that organisation.

The Editorial Guidelines contain many principles and practices relevant to investigations; the guidance here is some of the best practice learned from a variety of programmes over the years. Other Guidance notes – such as those relating to Secret Recording and Right of Reply – include relevant information too, and it is advisable to discuss all investigations with Editorial Policy throughout the process.

Where possible, investigations should normally be broadcast when ready rather than held for scheduling purposes or as part of a series. Any exceptions should be agreed beforehand so the risks of the programme sitting on the shelf can be properly assessed on a case-by-case basis.

Start-Up Considerations

Any proposal to undertake an investigation into crime or serious anti-social behaviour must be referred to a senior editorial figure or, for independents, to the commissioning editor. It can often be helpful to produce a detailed outline laying out the aims of the investigation, the existing evidence and the parameters of the inquiry. Normally, there will be prima facie evidence of the behaviour to be revealed (or intention to carry out the behaviour) before the BBC will use secret recording as an investigative tool.

(See Editorial Guidelines Section 8 Reporting Crime and Anti-Social Behaviour: 8.4.40 – 8.4.42 and Section 7 Privacy 7.4.9 – 7.4.10)

It will normally be necessary to hold a start-up discussion with key members of the production team, undercover operatives, a senior editorial figure and – as necessary – Editorial Policy, Programme Legal Advice and BBC Safety, in order to consider the risks and management of the investigation. These discussions should be held at the earliest possible stage and may even be required before a firm commitment is made to production of a programme –

for example, where it is intended in the first instance to carry out development work involving deception or undercover operations.

Before any undercover work begins, appropriate members of the production team should be aware of all relevant Editorial Guidelines and guidance, practices to be followed when using secret filming equipment, how to carry out filming in such a way that the footage and its evidential value can be verified by the production team, the contemporaneous note-taking and record keeping required, and legal and safety considerations.

Particular attention should be given to any measures that may be necessary to ensure filmed material can be validated and the resulting investigation can withstand the closest scrutiny. This is even more important when using an undercover operative working in the field alone.

(See below: Authentication of Material)

Conducting the Investigation

Secret Recording Approval

Secret recording planned for the project should be given formal approval using the established procedures.

The cover story or any invitations to targets designed to encourage them to talk should be carefully thought through, avoiding any unjustifiable entrapment. Advice is available from Editorial Policy and Programme Legal Advice.

(See Editorial Guidance Section 7 Privacy: Secret Recording)
(See Guidance: Secret Recording)

Record Keeping

A daily diary is usually kept by the production team, detailing all contacts with the subject of the investigation whether filmed or not.

When making ongoing use of secret recording, each secretly recorded tape needs to be logged and kept secure and preferably copied, with the original kept in secure storage. Such logs usually contain a brief summary of what is on the tape and who filmed it. It is also helpful if the base team review the tapes and keep a log that is reviewed by the undercover team on return.

(See below: Authentication of Material)

Material from Third Parties

The use of any material recorded by a third party, whether gathered openly or covertly, must be in accordance with the Editorial Guidelines.

(See Editorial Guidelines Section 3 Accuracy: 3.4.5 – 3.4.6 and Section 7 Privacy: 7.4.21)

Payments

Any payment to contributors must be in line with the parameters set out in the Editorial Guidelines.

(See Editorial Guidelines Section 8 Reporting Crime and Anti-Social Behaviour: 8.4.20 – 8.4.21 and 8.4.35 – 8.4.37)

When Plans Change

If the parameters of the investigation shift significantly during production, this should be confirmed and agreed with the senior editorial figure and discussed as required with Editorial Policy. It may be necessary to go through some of the initial procedures again to ensure the refocused investigation still has the necessary prima facie evidence and public interest.

Working Undercover

All proposals to send an undercover operative to work in a business or organisation must be approved by Director Editorial Policy and Standards.

The CV used for the job application should also be discussed with Editorial Policy and should normally contain as much accurate information as possible. Should the application be successful, an entirely fictitious past and persona creates extra pressures in what is already a uniquely demanding situation, and could jeopardise the investigation.

When someone is working undercover, another member of the production team is normally based nearby in order to provide back-up or other assistance and support (including debriefs and help with record keeping).

(See below: Authentication of Material)

Normally the secret recording will only commence when the operative has gained evidence of or witnessed the behaviour and practices they are seeking to capture. There may be certain occasions where recording can begin immediately, but the parameters for this will have been agreed in advance. Operatives should usually keep a daily diary noting the details and context of what was filmed and why.

(See above: Record Keeping, and below: Authentication of Material)

Undercover operatives are in place to gather evidence and record the story, not create the story. If a manager in the business or organisation under investigation (or someone else in a position of authority) gives instructions to our undercover operative do something that departs from rules, regulations or best practice, it may be appropriate to follow those instructions where this is important evidence showing how an organisation operates and manages their staff. However, care will need to be taken to assess the possible implications or consequences of an undercover reporter following such instructions. For example, could it have significant negative consequences for innocent members of the public or could it be argued convincingly that the operative should have questioned the instructions or simply refused to comply? Where operatives could face such dilemmas, it is important to think through possible

scenarios before going undercover and draw up protocols on how to proceed. At all times, we need to balance the requirements of the investigation with our responsibilities to the public and others. We should ensure that the public interest in our journalism is not outweighed by public concern about any harm that may have been caused by our methods.

Operatives whose true identity is discovered and are directly challenged as to whether they are filming should normally respond truthfully, without going into detail or engaging in protracted discussions. It is usually advisable to then leave as quickly as possible, remaining calm and non-confrontational, making clear that the programme's Editor will deal with the matter.

Using Whistleblowers

Investigations may often include evidence from whistleblowers. While corroborating their story, it is important to consider any ulterior motives they might have, particularly if they no longer work for the organisation or company concerned and their claims could be discredited by the manner of their dismissal. Consideration should also be given to what steps, if any, a whistleblower has given to resolving their concerns within the relevant organisation and whether or not it is appropriate for them to take any such steps before the BBC acts.

Where whistleblowers still work for an organisation under investigation and their identity needs to be protected, care must be taken not to identify them in any notes or other material that could be seen by third parties (particularly if that material could later be called upon as evidence in a court case or complaint).

(See Guidance: Anonymity)

Whistleblowers should not normally receive any payment or other inducement for their involvement.

Authentication of Material

Scrutiny

A successful investigation is likely to lead to detailed examination of the programme makers' work (including all rushes) – particularly when it uncovers wrongdoing that leads to prosecution or may have a commercial impact on the subject of the investigation. Those under investigation, or their representatives, will often seek to undermine the programme's integrity by looking for weaknesses in its evidence or investigative process, or questioning the good faith of those who gathered the evidence. Production teams should bear this in mind at all stages of the programme making process and be confident that all material used in the programme, supporting evidence (including records and notes) and the processes followed are properly preserved and can withstand the closest scrutiny.

Withstanding such scrutiny will often depend on the ability of the production team to demonstrate the authenticity of any evidence supporting the programme's allegations.

Authentication

The Editorial Guidelines state that "Where appropriate to the output, we should...validate the authenticity of documentary evidence and digital material". The Editor of an investigative programme has overall responsibility for ensuring that all evidential material to be broadcast meets the standards necessary to achieve due accuracy.

(See Editorial Guidelines Section 3 Accuracy: 3.1 Introduction)

Each allegation in a programme should be considered in isolation. The weight or quantity of evidence obtained throughout the investigation may not be, on its own, sufficient to overcome any doubts raised about the accuracy of an individual allegation or piece of evidence.

The need to validate the authenticity of filmed or recorded evidence should be considered at the outset of an investigation - for example in a start-up meeting with key members of the production team including any undercover operatives or others working 'in the field'. Consideration should be given to gathering supporting material where possible. This may include consistent and unbroken time-coding of rushes, video diaries, and written records or notes of the events that have been witnessed by the programme's undercover operatives.

(See above: Start-Up Considerations and Editorial Guidelines Section 3 Accuracy: 3.4.10 Note-taking)

Records and Notes

Accurate and reliable note-taking is an essential and prime journalistic craft; it can also be crucial to protecting the reputation of an investigative programme, its production team and the BBC.

When filmed evidence is later disputed by those under investigation, records and notes documenting what has been captured on camera, how it was filmed and any relevant surrounding events can be an important tool for validating the filming. These notes should normally be made as contemporaneously as operationally possible. It is advisable to give early consideration to what notes will be required, who will make them and how they will be made. This also applies to recorded audio evidence.

(See above: Start-Up Considerations and Editorial Guidelines Section 3 Accuracy: 3.4.10 Note-taking)

In addition, it is advisable to keep a detailed and contemporaneous diary of all other dealings with the subject of the investigation, outside of those that have been secretly recorded.

Remember that all records and notes may become relevant to a prosecution, other legal action or complaint to a broadcast regulator that follows an investigation.

Operatives Working Alone in the Field

It is usually recommended for an undercover operative to be supported in the field by a member of the programme team. This team member can offer production and safety support, as well as assistance with keeping records that validate any filmed material and corroborate the claims of the finished programme.

Where it is not possible for the operative to be supported in the field, the Editor (along with the production team) must subject the filmed or recorded material to the closest possible scrutiny, review the available supporting material and question the operative, in order to consider where any inconsistencies may lie and satisfy themselves as to the circumstances in which evidence was obtained, its significance and ability to withstand the scrutiny that can follow a successful investigation.

Editing

Throughout the editing process, it is important to ensure the finished programme reflects the evidence fairly and accurately, taking account the context in which any secretly recorded incidents took place. Achieving this may be aided by keeping detailed notes of what is on every tape, including a list of who has been filmed, with the producer reviewing all of the material before editing begins.

Apparently damning events should not be lifted out of context. A transcription of the full-surrounding material can help to avoid this.

Where a secretly recorded target has been encouraged to talk by an undercover operative, this should be made clear in the programme.

Use of a 'Second Chair'

When dealing with a large amount of secretly recorded material, where only a small proportion can appear in the finished programme, it is important that the editing process does not distort the overall meaning or significance of the secretly recorded material as a whole. In some circumstances can be helpful to have a senior editorial figure (an Executive or someone with appropriate editorial expertise agreed by a senior manager) acting as a 'second chair', reviewing the thesis of the programme, the allegations to be made and the editing process in the context of all relevant rushes.

Right of Reply

When the allegations to be made in the film have been identified, they should be put to the individual, organisation or company concerned for a response.

(See Editorial Guidelines Section 6 Fairness, Contributors and Consent: Right of Reply)
(See Guidance: Right of Reply)