

LEVESON INQUIRY

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SUMMARY OF THE EVIDENCE PRESENTED BY THE BBC

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Introduction

1. This note summarises the evidence presented by the BBC in response to various section 21 requests. The material was disclosed in two tranches.
2. Tranche 1 comprises:
  - i. Editorial Guidelines and Editorial Policy Guidance from 2005 – present;
  - ii. Training materials from 2005 – present;
  - iii. Data Protection Policies from 2005 – present;
  - iv. BBC Trust documentation including complaints policies and procedures;
  - v. Compliance policies and documentation;
  - vi. Reports following recent editorial incidents (The Queen documentary, “Ross-Brand”, the premium phone line scandal)
  - vii. Fraud Management and Anti-Bribery policies;
3. The majority of this material is already in the public domain.
4. Tranche 2 of the disclosure comprises:
  - i. Witness statements of:
    - i. Lord Patten, Chairman of the BBC Trust
    - ii. Mark Thompson, Director General of the BBC
    - iii. Nicholas Eldred
    - iv. Robert Peston
    - v. Nicholas Robinson
    - vi. Richard Watson
    - vii. Greg Dyke
  - ii. Exhibits including:
    - i. The Royal Charter for the BBC;
    - ii. The Framework Agreement 2006 (as amended)
    - iii. BBC Trust Protocols

- iii. Board Minutes
5. In July 2011, the Director General of the BBC and the Audit Committee of the BBC commissioned two concurrent reviews in order to provide assurance that the practices exposed at News of the World were not on-going at the BBC. Following these reviews, the BBC has given evidence that, to the best of its knowledge, since January 2005:
- i. The BBC has not engaged in phone hacking or commissioned anyone to do it;
  - ii. The BBC has not engaged in computer hacking or commissioned anyone to do it save for where a programme has been about the subject of computer hacking;
  - iii. The BBC believes there are exceptional circumstances in which the public interest involved in a given journalistic investigation can justify the use of blagging. The review had not discovered any instances in which the BBC has engaged in blagging without a clear public interest justification;
  - iv. The BBC has not made improper payments to police officers or public officials;
  - v. The BBC has not made improper payments to mobile phone companies;
  - vi. Private investigators are used periodically.

#### **Regulatory Structure of the BBC**

6. The BBC is a national public service broadcaster. It is established by a Royal Charter and a Framework agreement between the BBC and the Secretary of State for Culture, Olympics, Media and Sport. The Framework Agreement makes provision for the BBC's funding and regulatory duties.
7. The Royal Charter was last renewed in July 2006 and came in to force on 1 January 2007. It established the BBC Trust and provides its constitutional basis. The Charter provides that the BBC exists to serve the public interest and that its main object is the promotion of its public purposes. The public purposes of the BBC are:
- i. Sustaining citizenship and civil society;
  - ii. Promoting education and learning;
  - iii. Stimulating creativity and cultural excellence;
  - iv. Representing the UK, its nations, regions and communities;
  - v. Bringing the UK to the world and the world to the UK;

- vi. In promoting its other purposes, helping to deliver to the public the benefit of emerging communications, technologies and services, and, in addition, taking a leading role in the switchover to digital television.
8. The BBC achieves its public purposes through the provision of output which consists of information, education and entertainment, supplied by television, radio and online services and similar or related services.
9. The BBC Trust (“the Trust”) is the governing body of the BBC, responsible for setting the overall strategic direction of the BBC and for exercising a general oversight of the Executive Board of the BBC (“the Executive”). The Trust has responsibility for stewardship of the licence fee revenue and other resources of the BBC, for upholding the public interest and specifically the interests of licence fee payers, and for securing the effective promotion of the public purposes.
10. In accordance with Articles 8 and 9 of the Charter, the Trust and the Executive must act separately and the Trust must maintain its independence from the Executive. As the Trust is the sovereign body of the BBC, the BBC Executive must act in accordance with its decisions in areas where the Trust has functions. The Trust must not seek to exercise the functions of the Executive.
11. The Executive is responsible for all operational decisions about delivering BBC services.
12. The Trust and the Executive replace the former BBC Board of Governors.

#### Sources of Regulation

13. The principles guiding journalistic output in the BBC are defined in the Royal Charter, the Framework Agreement, the Editorial Guidelines 2010 and associated editorial policy guidance.
14. The Editorial Guidelines were revised in 2010 following a public consultation process. The Guidelines may be derogated from provided there is editorial justification and the derogation envisaged has been discussed and agreed in advance with a senior editorial figure or, for independents, with the commissioning editor. The Editorial Guidelines provide

a framework for the considered editorial judgments needed when making output. When the Guidelines were revised in 2009-2010, consideration was given as to whether examples should be used to illustrate the principles referred to. The decision was taken to keep the Guidelines simple and to add context through training.

15. In addition to the Editorial Guidelines, certain programmes, particularly those which rely on investigative journalism, have their own handbooks. These handbooks supplement the Guidelines.
16. The BBC has separate policies in place in relation to *inter alia*:
  - a. Complaints;
  - b. Data Protection;
  - c. Fraud management and Anti-Bribery.
17. The BBC Trust has a number of Protocols which include Trust Oversight of the BBC (E1), Investigations (E2), the complaints framework (E3) and Editorial Standards (B2).

Responsibility for Ensuring Compliance with the regulatory regime

18. The Trust regulates the whole of the BBC's output and oversees and enforces the BBC's compliance with the Editorial Guidelines. However under the terms of the Charter and Framework Agreement and the Communications Act 2003, some aspects of the content broadcast on the BBC's UK public broadcasting services are also regulated by the Office of Communications ("Ofcom"). In respect of such content, both organisations have overlapping regulatory jurisdiction. The relationship between the BBC and Ofcom is set out in greater detail below.
19. The Executive is responsible for the direction of the BBC's editorial and creative output and for ensuring that all relevant legal and regulatory requirements are complied with. In this respect, the Trust has a supervisory role – generally limited to broadcast content after it has been transmitted – and holds the Executive to account for compliance including through its function as an appellate body, in its regular reviews of impartiality and in the regular reports on editorial issues that it receives from the Executive.

20. The Director General of the BBC is Editor-in-Chief and, in accordance with Article 40 (3) of the Royal Charter, is ultimately accountable for the BBC's editorial and creative output. The Executive Board is responsible for ensuring that the BBC adheres to its corporate governance regime. Members of the Executive Board include the Director General, the BBC's non-executive directors and the directors of News Group, Audio and Music, Vision, Future Media, the Group Finance Director and the Chief Operating Officer. Individual Boards in the output areas report in to the Executive Board. This includes the Editorial Standards Board which is the senior editorial forum discussing editorial standards issues facing the BBC overall and implementing responses to those issues as they arise.
21. Different units within the BBC have responsibility for general oversight of specific regulatory areas. For example, Fraud Management is overseen by the Investigations Unit under the overall supervision of the Chief Operating Officer and the Chief Financial Officer. Data Protection is overseen by the Information and Compliance Unit. With effect from 1 October 2007, the Controller, Fair Trading was appointed as BBC Compliance Officer. There is also a Central Compliance Unit (also established in 2007) which is responsible for monitoring, improving and reporting on the BBC's compliance obligations. The Compliance Unit is *"not responsible for delivering compliance but is responsible for ensuring that an appropriate framework is in place to minimise compliance failures."* Editorial policy compliance and financial compliance fall outside the remit of the Compliance Unit's functions.
22. Responsibility for ensuring compliance with the Editorial Guidelines is imposed on each individual editor and producer. The Editorial Guidelines impose a system of mandatory and recommended referrals to Editorial Policy and/or a senior editorial figure. The more recent guidance emphasises that if in doubt, individuals should refer up. Programme Legal Advice ("PLA") may and, in certain circumstances, must also be consulted. Examples of mandatory referrals to Editorial Policy/ PLA include:
- i. Any proposal to rely on a single unnamed source making a serious allegation or to grant anonymity to a significant contributor;
  - ii. "Serious cases" where it is proposed to deceive a contributor as to the planned use and context of their contribution for factual or news output;
  - iii. Illegal gathering of material outside the UK;
  - iv. Use of unattended recording equipment on private property without the consent of the owner, occupier or agent;

- v. Any proposal to broadcast without consent any recording, including a telephone call, originally made for note-taking purposes;
  - vi. Any proposal to use a secret recording obtained by a third party.
23. Editorial Policy advice is available 24 hours a day 365 days a year. Live programme editors are able to refer to Editorial Policy in the course of transmission if required. There is a Managed Programme Risk List which identifies those programmes likely to pose editorial issues.
24. In practice, knowledge of and compliance with the guidelines is secured in the following ways:
- i. Contractual requirements imposed on any person making BBC content (including independent production companies);
  - ii. Training of staff (as required by the Framework Agreement).

Relationship with external bodies/ other regulators

*The BBC and Ofcom*

25. In March 2007, the BBC Trust and Ofcom entered in to a Memorandum of Understanding concerning their relationship. This Memorandum of Understanding is not intended to be, and is not, legally binding.
26. The BBC is required to observe certain of the programme standards objectives set by Ofcom under section 319 of the 2003 Communication Act to the extent that such standards do not concern the accuracy or impartiality of the content of any programme included in the BBC's UK Public Broadcasting Services. The relevant programme standards are:
- The protection of the under 18s;
  - The exclusion from services of material which is likely to encourage or to incite the commission of crime or to lead to disorder;
  - The exercise of the proper degree of responsibility regarding the content of religious programmes;
  - The application of generally accepted standards to provide adequate protection from the inclusion of harmful and offensive material in services; and

- Refraining from the use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred;
27. Clause 45 of the Framework Agreement requires the BBC to comply with the Ofcom Broadcasting Code on fairness and privacy under section 107 of the Broadcasting Act 1996. The Editorial Guidelines reflect the Ofcom Broadcasting Code and reproduce the Ofcom code in full. Compliance with the Editorial Guidelines is seen as assuring compliance with Ofcom’s code on fairness and privacy. Paragraph 19.3.3 of the Editorial Guidelines states that where Ofcom finds a breach of the privacy or fairness sections of its Code, it may require the BBC to broadcast a statement of its findings. Where Ofcom considers that the Code has been breached *“seriously, deliberately, repeatedly, or recklessly”*, it can impose sanctions which range from a requirement to broadcast a correction or statement of finding to a fine of no more than £250,000.
28. In fairness and privacy complaints, the BBC Executive will ask the complainant to choose whether the BBC or Ofcom should consider the complaint first and at Trust level, the Trust Unit and Ofcom will liaise. Normally the Trust’s Editorial Standards Committee will not consider a fairness and privacy or standards matter which overlaps with Ofcom until Ofcom has completed its processes.
29. The Memorandum of Understanding between the BBC and Ofcom provides that when Ofcom conducts an investigation of a complaint about a BBC programme:
1. The BBC Executive will represent the BBC in dealings with Ofcom about potential breaches of the Codes. Ofcom enquiries should be directed to and dealt with by the BBC’s Editorial Complaints Unit; and
  2. Ofcom will inform the Trust of all adjudications regarding breaches of the Codes and any statutory sanction proceedings which could follow. For information the Trust will also be copied into any further substantive formal correspondence regarding the adjudication or sanction.
30. The accuracy and impartiality of programmes within the BBC’s Public Broadcasting Services are the responsibility of the Trust. Ofcom will not entertain complaints relating to the

accuracy or impartiality of BBC content. Should such complaints arise, in practice Ofcom informs the complainant that such a complaint can be handled by the BBC.

31. Ofcom also exercises a regulatory function in relation to the BBC's commercial activities, notably where they impact on the wider media market - paragraph 19.3.2 of the Editorial Guidelines states that all BBC commercial services must comply with the Ofcom statutory Code and Article 29 of the Framework Agreement requires the BBC Trust and Ofcom to create a Joint Steering Group in respect of market impact assessments. Any commercial service which is provided by the BBC and licensed by Ofcom is required to observe all of the standards set by Ofcom under section 319 of the Act. The BBC Trust assesses the market impact of "non-services" in-house applying a Public Value Test.

#### *Other Bodies*

32. The Fraud Management policy indicates that the BBC will cooperate with the Serious Fraud Office where appropriate. The BBC has previously cooperated with the National Audit Office.

#### **BBC's policy on privacy**

33. The privacy policy is defined in the Editorial Guidelines (sections 1 and 7). Paragraph 1.2.8 of the Editorial Guidelines provides:

*"We will respect privacy and will not infringe it without good reason, wherever in the world we are operating. Private behaviour, information, correspondence and conversation will not be brought in to the public domain unless there is a public interest that outweighs the expectation of privacy."*

34. Section 7 of the Editorial Guidelines cites Rule 8.1 of the Ofcom Broadcasting Code: *"Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted."*

35. Any infringement of privacy is considered in two stages, requiring justification for both the gathering and the broadcasting of material where there is a legitimate expectation of privacy. Privacy is location and behaviour specific.

36. The privacy policy is supported by a number of supplementary principles such as a requirement of informed consent, guidelines on the granting of anonymity to sources and a



right of reply. There is no single policy regulating the use of private investigators or investigation techniques. There is “Investigative Journalism Guidance” and specific policy guidance concerning the use of secret recording. Secret recording for news and factual output must be justified by a “clear public interest” and is a method of last resort. The Editorial Guidelines prohibit fishing expeditions – there must be prima facie evidence of wrong doing or intended wrongdoing prior to secret recording being authorised.

*“Public Interest”*

37. The “public interest” test is defined in section 7 of the Editorial Guidelines:

*“There is no single definition of public interest. It includes but is not confined to:*

*Exposing or detecting crime*

*Exposing significantly anti-social behaviour*

*Exposing corruption or injustice*

*Disclosing significant incompetence or negligence*

*Protecting people’s health and safety*

*Preventing people from being misled by some statement or action of an individual or organisation*

*Disclosing information that assists people to better comprehend or make decisions on matters of public importance.*

*There is also public interest in the freedom of expression itself.*

*When considering what is in the public interest we also need to take account of information already in the public domain or about to become available to the public.*

*When using the public interest to justify an intrusion, consideration should be given to proportionality; the greater the intrusion, the greater the public interest required to justify it.”*

38. The proportionality element to the public interest test was introduced in the 2010 Guidelines.

**BBC’s Relationship with the press/ other media outlets**

When using or considering using material from the press and/or other media outlets, the BBC will have regard to both the accuracy of the material and the manner in which the material has been obtained. Paragraph 3.4.5 of the Editorial Guidelines provides: *“Material from Third Parties must be treated with appropriate caution taking in to account the reputation of the source. We should only use material supplied by third parties if it is credible and reliable.”* In relation to material that may potentially breach privacy, Paragraph 7.2.4 of the Editorial Guidelines provides that the fact of publication of private material by other media may not justify the BBC reporting it.

39. Material sourced from third parties must, in principle, comply with the BBC Editorial Guidelines. This includes both user generated content and reports from the press. It is a matter for editorial judgment as to whether to run a story covered by another press organisation without independent corroboration. Breaking News will on occasion run with information received from the Press Association alone.
40. The BBC places accuracy above speed in its reporting of events. There are instances on which the BBC has decided not to run stories without independent corroboration even though other media outlets are covering them. For example, following the 7/7 bombings, initial reports were that there had been a power surge. The BBC did not report that there had been bombings until this had been confirmed, notwithstanding that other media agencies were running the news that there had been bomb blasts.
41. As to secret recordings obtained from third party sources, the guidelines require consideration of whether the BBC would have considered the recording justifiable in similar circumstances. The use of such recordings is not prohibited even if the BBC would not have obtained the material in the circumstances. For example, the BBC did use the recordings of Sarah Ferguson accepting cash-for-access to Prince Andrew, Lord Triesman's World Cup bribery claims, Alan Duncan's comments concerning MP's expenses, and Gordon Brown's "bigot" comment.
42. When deciding whether to use these materials, the BBC will consider the extent to which the information is already in the public domain as well as the public interest in the recording being broadcast. For example:
- i. Alan Duncan had engaged with the Press and made an apology after his comments had been made public and it was at this stage that BBC coverage commenced.
  - ii. Gordon Brown's "bigot comment" was a pool recording by Sky News and because it was pool content, the BBC automatically had access to it under its trading terms. It was already running on Sky News and the discussion at senior level concluded that the public interest warranted running the content.

#### **BBC's Relationship with politicians**

43. The Framework Agreement and Editorial Guidelines make provision for the broadcast of Party political broadcasts. There are rules in relation to conflict of interest and specifically in relation to members of BBC staff pursuing political careers. MPs and politicians are generally not given payment for contributions to news and current affairs programmes other than genuine out of pocket expenses.

#### **BBC's Relationship with the police**

44. There are instances in which BBC policy requires its staff to contact the police, for example on discovery of evidence of sexual grooming. The BBC cooperates with the police when participating in tag along raids.

#### **BBC's Complaints System**

45. The complaints system is described in outline in the complaints webpages which are publically accessible.

46. At first instance, unless a complaint specifically concerns the Trust or the Trust Unit, it will be considered by the Executive. The Trust considers appeals in accordance with the terms of the BBC Trust Protocol (E3). The Trust is the final arbiter in appropriate appeals and the final arbiter as to whether an appeal is for the Trust to determine or not. The Trust delegates this responsibility to the Editorial Standards Committee.

47. Within the Executive, there are different internal bodies with jurisdiction to consider different types of complaint – those alleging breaches of the Editorial Guidelines are considered firstly by Audience Services or the relevant programme. There is an internal appellate body, the Editorial Complaints Unit but this only has jurisdiction to consider complaints concerning a specific issue or programme. More general complaints will be referred to BBC Management.

48. There is a fast track procedure (expedited procedure) which can be applied to vexatious complainants – both the subject of the complaint and the complainant's history of making complaints must be considered.

49. In 2010, BBC Audience Services answered just under 240,000 complaints. 81% of these complaints were answered within the target 10-day time frame. At stage 2, 257 complaints were answered, 17 of which were upheld or partially upheld. 84 % of the stage two complaints were answered in the target time frame. The Editorial Standards Committee received 111 appeals, 84% of which were handled within the target timeframe (16 weeks from acceptance of the appeal), Of these, 40 were heard by the Editorial Standards Committee, of which two were upheld, six were partially upheld and 32 were not upheld.
50. Lord Patten's review on BBC Governance (2011) acknowledges that licence fee payers have expressed concerns that the current system is *"too complicated and too slow"*. The report recommends greater coordination through a Chief Complaints Editor and greater transparency. It concludes that the BBC should publish a single page guide explaining where complainants should go to complain about BBC broadcast content or services. It states that the BBC will work with Ofcom to ensure there is common language in the guide to explain in what circumstances complainants may complain to Ofcom. Other recommendations include the streamlining of the appeals process and frequent impartiality reviews.

#### **Overall effectiveness of the Regulatory regime**

51. Lord Patten's Review of the Governance of the BBC (2011) concluded that the governance system is working well but could be more effective.
52. In the past, the Trust has responded to editorial incidents by commissioning independent investigations. Changes to the compliance structures have then been introduced to redress such shortcomings as have been identified in those investigations. This has also enabled independent review of the action plan put in place by the BBC Executive to address the editorial issue that has arisen. For example, changes were introduced to the BBC compliance structures following the Hutton inquiry, the Neil Report and the Wyatt Report. Following the *"Ross-Brand"* incident in 2008, BBC Management announced an action plan to address the editorial failings which had led to the programme being broadcast. The progress made under this action plan was then subject to an independent review carried out by Tony Stoller and Tim Suter for the BBC Trust. Both the BBC Executive and the BBC Trust subsequently reported on the findings of that independent review.

53. More recent changes to the Editorial Guidelines have been informed by evidence . For example, prior to introducing the revised Editorial Guidelines in 2010, the BBC conducted a public consultation which focused on the guidelines applicable to accuracy and harm and offence. Kantar Media produced an independent report based on a public survey.
54. It is recognised that whilst the Editorial Guidelines play an important role, no set of rules or guidelines replace the need for producers, editors and managers to work from a clear set of editorial and ethical values when confronting difficult editorial challenges. Previous reports in to the effectiveness of BBC compliance systems conclude that the mechanisms are effective but it is the cultural awareness of a need for compliance which requires more work. This has historically been addressed by signposting and training.
55. In terms of future changes to the regulatory and governance structures, Lord Patten states that Non-Executive Directors will be taking on a *“clearer oversight and assurance role”* within the Executive Board.