

BBC protocol E2 – Investigations

May 2010

Investigations

What is a protocol?

'Protocols' are formal documents which set out how the BBC Trust will carry out its functions as required by the BBC's Royal Charter and Framework Agreement. Protocols set out the Trust's processes, and the respective roles and responsibilities of the BBC Trust and the BBC Executive Board.

The Charter and Agreement

The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and outlines the duties of the BBC Trust and the BBC Executive Board.

The Agreement sits alongside the BBC's Royal Charter. It provides detail on many of the topics outlined in the Charter and also covers the BBC's funding and its regulatory duties.

What this protocol is about

This protocol explains the BBC Trust's powers to obtain information from and to investigate specific activities and actions of the BBC Executive Board.

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Investigations

Approach and principles

- 1.1 The BBC Trust requires information about the BBC's activities and actions in order to carry out its duties and functions.
- 1.2 Where the BBC Trust makes general enquiries under the normal course of business, these are defined as 'requests for information'.
- 1.3 Where the BBC Trust is undertaking a formal inquiry for ascertaining facts this is defined as an 'investigation'.
- 1.4 This protocol reflects the following general principles:
 - (a) the BBC Trust, as the sovereign body of the Corporation,¹ has 'open book' access to all information in the BBC
 - (b) the BBC Trust will only seek that information which it requires to undertake its duties and functions, bearing in mind the administrative burden that it may place upon the BBC Executive Board through its requests for information
 - (c) the Executive Board, and its staff, will provide to the BBC Trust without delay any information that it requests.
- 1.5 Paragraph 1.4, and any other reference in this protocol to the obtaining of information by the BBC Trust, is subject to the consideration that the Trust recognises and respects the need to protect the identity of confidential journalistic sources, and will ask for information that could reveal the identity of such sources only in exceptional cases where it appears to the Trust that the public interest requires it taking into account the considerations set out in s10 Contempt of Court Act 1981.² Such a request will be referred to the BBC Director-General who will agree with the BBC Trust how it will be dealt with. If in any case the BBC Trust comes to be in possession of such information (whether as a result of a request or otherwise), all practicable steps will be taken in the handling of that information to ensure that the identity of the source is not revealed unless the BBC is legally compelled to do so.
- 1.6 Likewise, when the BBC Trust requests information to which legal professional privilege attaches (or might attach), all practicable steps will be taken to ensure that such privilege is maintained.
- 1.7 The protocol covers the BBC as a whole and (so far as in practice it is relevant) applies to all of the activities of the BBC, including but not limited to the BBC's UK Public Services; the BBC World Service; BBC Monitoring; non-service activities and the BBC's commercial activities.

¹ BBC Charter Article 9(2)

² Section 10 of the Contempt of Court Act 1981 (Sources of information) states that:

No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

Role and duties of the BBC Trust

- 2.1 The BBC Trust exercises a range of regulatory and other functions which require it to gather information from any part of the BBC, for example its various oversight duties as described in protocol E1 Trust Oversight of the BBC.
- 2.2 The BBC Trust also has a specific function under the Charter³ to conduct investigations, where appropriate, into any activity of the BBC which it has grounds to suspect does not comply with requirements supervised by the Trust. Such investigations could result from the BBC Trust's own knowledge of BBC actions or from information brought to the Trust by a third party.

Role and duties of the BBC Executive Board

- 3.1 Within the scope of this protocol, the Executive Board will co-operate fully in supplying information necessary for the BBC Trust to conduct its ongoing work and its specific investigations.
- 3.2 The Executive Board will direct its staff to comply with the requirements of the BBC Trust in supplying information as requested.
- 3.3 The Executive Board will ensure its disciplinary procedures recognise that failure to comply with an instruction from the BBC Trust or fully co-operate with the Trust in respect of any investigation or request for information may constitute a serious disciplinary offence that may lead to dismissal.

Procedures

Request for information

- 4.1 In the normal course of business the BBC Trust may request:
 - (a) the presentation of any document, data, recording or other record held by the BBC
 - (b) for any member of staff to provide information or give evidence to it.
- 4.2 The BBC Trust will normally give notice verbally or in writing to the Executive Board, or its staff, specifying the information or class of information with which it wishes to be provided, allowing a reasonable period of time in which to provide that data depending on the urgency of the business.

Investigations: initial assessment by the BBC Trust

- 4.3 When considering an investigation the BBC Trust will, in the first instance, assess the nature of the matter and decide on the appropriate action to take.
- 4.4 This may take the form of one or more of the following:
 - (a) the matter does not warrant further investigation

³ BBC Charter Article 24(2)(h).

- (b) the BBC Trust will instruct the Executive Board to undertake an investigation, reporting to the Trust as appropriate
- (c) the BBC Trust will commission and/or conduct its own investigation.

Investigations: undertaken by the BBC Executive Board

- 4.5 At its discretion, the BBC Trust may ask the Executive Board to conduct an investigation into any matter that the Trust believes warrants further analysis.
- 4.6 The Executive Board will investigate and will produce a written report to the BBC Trust, or a nominated Trust committee, to a timescale agreed with the Trust.
- 4.7 If the investigation produces findings that in the Executive Board's opinion require action, the Executive Board will include in its written report its proposed course of action.
- 4.8 The BBC Trust will consider the Executive Board's report, including the Executive Board's proposed course of action, and decide what action, if any, it considers is required.

Investigations: commissioned/conducted by the BBC Trust

- 4.9 The BBC Trust may commission or conduct its own investigation independent of the Executive Board, in particular (but non-exhaustively):
 - (a) where the BBC Trust requires information or data by a means which is independent of the Executive Board
 - (b) where a matter for investigation is such that the BBC Trust has reason to believe that the Executive Board may be conflicted or compromised.
- 4.10 In any such investigation, the BBC Trust will agree with the Director-General how information that may tend to disclose a confidential source will be dealt with taking into account the considerations set out at s10 Contempt of Court Act 1981.
- 4.11 Depending on the nature and seriousness of the investigation the BBC Trust will normally carry out one or more of the actions below:
 - (a) the BBC Trust should, in the first instance, seek legal advice including, where relevant, in relation to the employment rights of those concerned
 - (b) unless the BBC Trust has reason to believe the Director-General is conflicted, the Trust will inform the Director-General, and where relevant and appropriate the applicable Executive Director, of the investigation
 - (c) the BBC Trust may instruct the Trust Unit⁴ to undertake the investigation
 - (d) the Trust Unit may commission external, professional consultants as part of its investigation
 - (e) the BBC Trust may use a nominated individual member of BBC management staff as a contact point between the Trust and the Executive Board in respect of an investigation

⁴The Trust Unit provides independent advice and support to the BBC Trust.

- (f) the BBC Trust may use the BBC's Director of Risk and Assurance to carry out investigations when appropriate
 - (g) in instances where the Director of Risk and Assurance is the facilitator, both the Director of Risk and Assurance and his or her team would act in confidence to the BBC Trust.
- 4.12 The following is a non-exhaustive list of powers that the BBC Trust has in conducting investigations, directly or by persons acting on its behalf as set out above:
- (a) having taken into consideration the employment rights of the individuals concerned, the BBC Trust may seek any information or data that it requires from any member of staff of the BBC, and all members of staff must co-operate with any request made by the Trust
 - (b) the BBC Trust may secure, without prior notice, any data, recording or other record held by the BBC it requires that may aid the investigation, and any device or equipment used to store that data. In such cases after the data, recording or other record is secured (whether electronically or otherwise) but before it has been inspected it will be made available for review by the BBC's Director of Risk and Assurance, General Counsel or their nominees to enable them to identify material they consider should be excluded (e.g. because it is irrelevant or constitutes information confidential to an individual) from inspection by the BBC Trust. The relevant individual must inform the BBC Trust of the nature of the material that it considers should be excluded, for final Trust determination.
- 4.13 At the conclusion of the investigation, the BBC Trust will consider its findings.
- 4.14 The BBC Trust may require the Executive Board to respond formally to the investigation report, including, where appropriate, identifying the Executive Board's proposed course of action.

Outputs and timings

- 5.1 This section sets out a summary of the key outputs, and where known, timings for this protocol.
- (a) The BBC Trust will, as appropriate, set out its required timetable for submission of any information or reports it has commissioned, whether from the BBC Executive or from its own professional advisers.
 - (b) If any such information or report is delayed, the BBC Trust should be informed as to the reasons for the delay and may decide to take further action itself.
 - (c) The BBC Trust will reserve the right to share any information gathered with such regulatory authorities as it deems fit in line with the powers and functions of those authorities and on such terms as the Trust may be able, or see fit, to specify.

References

6.1 BBC Charter

The following article in the BBC's Charter is relevant to this protocol:

- (a) BBC Charter Article 24(2)(h) – Functions of the Trust

6.2 BBC Framework Agreement

There are no clauses in the Agreement relevant to this protocol.

6.3 Other documents

There are no other documents relevant to this protocol.

Version	Date of publication	Approved by the Trust	Summary of changes since previous version
1.0	January 2007	9 & 10 January 2007	n/a
2.0	May 2010	18 February 2010	This document has been updated to fit in the new protocol format and explain processes in more detail. It incorporates the previous protocol 'D9 Trust Investigations and Information Gathering'.