

## AUDIO AND MUSIC COMPLIANCE REVIEW

Report by Tony Stoller and Tim Suter for the BBC Trust and Editorial Standards Committee

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## I. INTRODUCTION

1. BBC radio creates, commissions and broadcasts programmes in a volume, and using a variety of sources, which exceeds any comparable organisation in the world. This output, the responsibility in the most part of the Audio and Music Division (A&M), has to comply with both external and internally-set standards which are correspondingly high, whilst retaining its ability to be creative and challenging as well as entertaining and informative.

2. The edition of the Russell Brand Show broadcast on 18 and 25 October 2008 – and generally referred to as “Ross Brand”, by which short-hand we shall refer to the incident throughout our report – was widely acknowledged to have shown significant failings in both editorial control and compliance procedures. Following this incident, the Editorial Standards Committee (ESC) of the BBC Trust at its meeting on 30 October 2008 called for the BBC’s Director General to present to it a plan to strengthen those procedures. Proposals were presented to the ESC and the BBC Trust in December 2008. The ESC also committed on 30 October 2008 to carry out an independent validation of the effectiveness of the measures taken by the management, and in May 2009 commissioned Tony Stoller and Tim Suter to conduct that review. This report sets out what we found and our views on what still needs to be done.

3. Our terms of reference, which are to be found at Annex D, asked us to consider how far the measures committed to by the Executive last December address the issues exposed by Ross Brand; the effectiveness of the current compliance arrangements, both for in-house and independent programmes, and how they have been implemented; and the adequacy of monitoring of those arrangements. We have conducted a paper and systems audit of the compliance arrangements described to the ESC by the Executive in July 2009 to establish what is now being done; interviewed a selection of those who produce and commission programmes, and those who are responsible for overall and specific compliance management, to assess how far those arrangements ensure compliance; and discussed with those involved how compliance requirements – and, crucially, a compliance culture – have been got across to all those involved.

4. Most of our work has been within A&M, and with a selection of independent programme makers which are commissioned by that Division. However, significant parts of the BBC’s radio output come from other BBC divisions, and we have expanded our inquiries slightly to recognise that. We have not investigated the World Service or the Nations arrangements, even though some BBC network radio output comes from those sources – and indeed, the compliance issues that gave rise to the original incident may well arise in these other programme areas. Our brief similarly did not extend to interviewing presenters and other ‘talent’, individual producers or independent producers, beyond the representative group listed in Annex B.

5. Over the course of our review, we have met many senior staff in the BBC networks, the production divisions within the BBC, and representatives of the independent sector. We have reviewed many hundreds of pages of documentation relating to policies and processes. Throughout our review, we have received full co-operation and courtesy from BBC management, staff and independent producers, to whom we give our thanks. We also wish to acknowledge the work and support for this review from Manuela Grayson and Mary Macnamara of Perspective.

6. We have kept in mind throughout the need for BBC programmes and programming to continue to be creative and appropriately cutting edge, and we recognise that any compliance system needs to support creative, risky and innovative programme making. Nevertheless, the Ross Brand incident demonstrated that apparently minor details of interpretation – about precisely who is required to do certain things – can become very significant. The lack of absolute clarity over whose responsibility it was to listen to the completed edition of the Russell Brand show was the proximate cause of that compliance debacle. We have therefore needed to consider even the smallest details of the compliance processes. The resulting technicalities in our audit and analysis address the crucial need to get those details right.

7. In the following analysis we will be recommending three key courses of action: a 'spring clean' of compliance processes; further attention to training; and a periodic review to catch variations in practice and circumstances, as well to deal with future changes. We are aware of the very significant amount of excellent work that has already been done, and judge that this approach if followed will readily rectify the outstanding issues.

#### Format of the report

8. Following this introduction, we begin the main body of the report in Chapter II by setting out the context of our work, and providing an overview of the key changes to compliance arrangements so far within A&M (paragraphs 9 - 25). We then identify in Chapter III the four key areas for attention needed to bring those changes up to the necessary level of effectiveness (paragraphs 26 – 59). Chapter IV considers a number of pressures which may affect compliance in the next few years (paragraphs 60 - 72). We then re-state our specific recommendations in Chapter V.

Annex A sets out our audit findings in detail; Annex B lists those we have interviewed; Annex C is a glossary of terms; and Annex D contains our full terms of reference.

TONY STOLLER  
TIM SUTER

## II. CONTEXT AND OVERVIEW

### 1. Events since 2003

9. Two factors, over the past half dozen years, have fundamentally altered the context within which compliance needs to be addressed within the BBC. First, the BBC's regulatory and governance structures have changed, re-shaping where responsibility finally rests, and the consequent lines of responsibility. The creation of Ofcom in December 2003 established an independent adjudicator for the compliance of editorial output, including external codes drawn up by that regulator, which has the power to regulate the content of the BBC in relation to specific code requirements, and to impose sanctions where breaches have occurred. This has inevitably sharpened the attention given to the regulation of the BBC. Replacing the BBC Governors by the BBC Trust in January 2007, and corresponding changes in the way in which the BBC Executive is organised at the top level, have given increased clarity and formality to the ways in which the management of the BBC is held accountable by its governing body.

10. Second, the BBC has endured a series of editorial shocks which have substantially affected the organisation and its culture – and also its public image. The most significant recent incidents have been the Gilligan broadcasts and subsequent Hutton Enquiry in 2003/4; the series of scandals over competitions and voting which came to light in 2007; the documentary trailer which misrepresented the Queen in 2007; and then "Ross Brand" – the short hand reference which we apply throughout this report - in 2008. These have led to changes respectively in the oversight of output, to compliance in news and current affairs, in the supervision of audience participation, in the supervision of marketing and promotional activities, and to renewed editorial judgement and control systems.

11. The pace and depth of response has varied across the BBC, with the parts most hit by individual shocks understandably being at the forefront of change related to them. There were adjustments within A&M following the arrival of external regulation through Ofcom, and again after the issues uncovered by the competition and voting controversy in which radio practices came in for particular attention and criticism. However, it was the impact of Ross Brand which brought about a step change in the scrutiny of compliance, and which is the proximate reason for this present review.

### 2. Principles for the review

12. Our approach has been to examine how far compliance processes have changed since Ross Brand; to assess the extent to which the current processes are appropriate; and to examine how far they are sustainable. The central purpose of this review is to examine what currently exists, against the benchmark of what management has undertaken to do, and what the Trust has already agreed are appropriate steps. It was not our brief to design compliance arrangements anew.

13. We started with some assumptions about the role and value of compliance processes in A&M and more generally, their relationship with production and editorial judgement.

- First, we are clear that no process, however well engineered and monitored, can substitute for sound editorial judgement. If those initiating output do not perceive that there may be a problem, the system will not be engaged; if the prevailing internal culture regards as acceptable material which is inappropriate, then the processes of review and referral are otiose; and if there is wilful evasion, then no quantity of compliance manuals will serve the case. We have seen no evidence that any of these factors currently exist, but they are risks which may always be present.
- Second, we believe that those involved need therefore to be competent and trained to think beyond process if necessary, and to subscribe to a shared understanding of editorial standards. It was evident from Ross Brand that placing undue faith in other people following due process runs the risk of allowing individuals to abdicate their own editorial judgement.
- Third, radio remains the most immediate medium, faster in impact even than online, since it reaches the listener unmediated. Radio continues to reach mass audiences, despite the spread of alternative platforms. It therefore requires procedures which are specifically suited to the way the medium is made and consumed. Compliance procedures need not only to be effective but also proportionate.

### 3. Creative programme-making

14. In addition to our review of the formal processes, we also wanted to establish whether increased care for – and policing of – compliance systems has had the effect of limiting creative programme-making. We were told of greater caution in the immediate aftermath of Ross Brand, and an increase in the number of referrals up the management hierarchy by programme-makers anxious to ensure that they do not break the rules. Our focus was on those required to implement the compliance system itself, and we did not therefore, interview front-of-microphone. Nevertheless, we are aware of reports in the press which suggest that some performers are strongly critical of what they perceive as nervousness in the BBC (even if such comments at present are more focussed on television than radio).

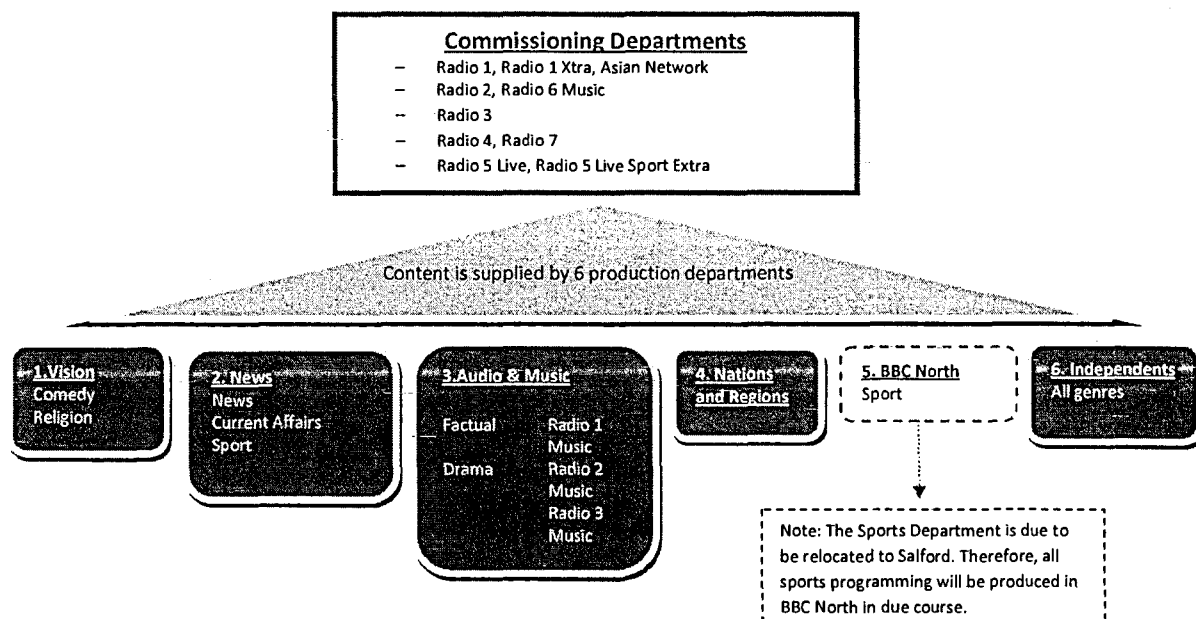
15. Being sure about this is all the more important because, in order to fulfil its public remit, the BBC needs to continue to make radio creatively, and to take appropriately assessed and managed risks. A compliance system which resulted in editorial timidity, in order to ensure that BBC radio never made a single mistake, would be as worrying as one where unacceptable mistakes were frequent. Crucially, the compliance process must therefore underpin and enhance editorial confidence and innovation – the hallmark of the BBC and its services.

16. We wish to make it clear that we found no evidence currently that programmes which ought to be made are not being made. Indeed, our view is that confidence in compliance arrangements can be the best safeguard for those who want to work at the creative cutting edge. Where there is full editorial interrogation ahead of broadcast about the risks of particular programmes, the eventual output is likely to be strengthened: Even if decisions later prove to have been just the wrong side of an editorial line – which must inevitably happen from time to time if ambition is sustained – that is more acceptable and will be better managed in the light of a respected and fully-observed compliance process.

4. Complexity and compliance

17. We also need to acknowledge from the outset that, although to outside observers BBC radio may appear monolithic, complexity is actually inherent in the organisation. In addition to the five analogue networks, there are four further digital networks, each associated in management terms with one of the analogue networks. All of those are managed within A&M, but each network has – appropriately – its own culture, its own corps of staff, and to a degree its own take on compliance; as well as, for the music radio networks, a production division responsible directly to the network management.

Fig. 1 Programme commissioning structure



18. The Programme Groups within A&M supply ‘built’ programmes and live programming to the networks. However, substantial parts of Radio Four and Five Live come from the News Division and are governed by its own compliance arrangements, while significant parts of Five Live come also from Sport. BBC Vision is responsible for supplying all of the in-house comedy production. Some of the output of the Nations finds its way onto network radio. Responsibility for programmes from



the Nations has recently been re-assigned to the News Division. BBC World Service is a separate case too. All of this produces a patchwork of cultures, desirable in itself, but which has to be reconciled to ensure consistency of compliance.

19. A minimum 10 per cent of BBC radio output<sup>1</sup> is now supplied by independent producers. These vary from substantial companies which originate both television and radio programmes, and can be expected to deploy considerable resources to production and compliance; through radio specialist companies making a range of output, with some ability to share such overheads; to individuals or small partnerships, where each project is effectively stand-alone in terms of cost and other resource. The BBC can seem to an independent producer to be dauntingly complex, with separate commissioning, legal, and editorial policy structures. Independent producers are responsible for providing their own legal advice, and are formally required to seek editorial policy advice through the BBC's Executive Producer or commissioning Editor. In practice, we were told that this formal requirement is sometimes achieved by the commissioning editor making the first approach themselves and thereafter being informed of advice sought and received. In other instances, the more formal approach is adopted. Many independent producers will themselves have previously been employed as BBC staff; others will have extensive knowledge of the BBC's editorial policy process, and will have formed good working relationships with the relevant advisors. We were told that in some such instances they enjoy direct access to the relevant editorial advice. Further, the larger independent producers may well be supplying programmes to different networks, and have to understand and take account of the varied cultures within each. Skills learnt and systems used by independent producers in television are not always readily transferable, given that most radio programmes are not made in the same way as television programmes.

20. Geography already adds to this complexity to a degree. A&M is based in central London, News and Sport are both at White City. Five Live's management is located in Television Centre rather than in the Broadcasting House complex, as befits the network's dependence on divisions already located in London W12. Given that the interface between the network controllers in A&M and their opposite numbers in News and Sport seems to be on a personal rather than a formal basis, it is heavily dependent on (and is at present well served by) the sympathy between the individual post-holders at any-time. The already distributed geography of the radio community will be further extended by the imminent move of Radio Five Live, along with the Sport production department, to Salford, which we discuss in Chapter IV, although News will move back to Broadcasting House,

21. The complexity of production arrangements is matched by growing complexity of output on associated new media platforms, and other former peripherals which are now ever more closely linked with what were once stand-alone radio shows. This has also led to the creation of additional compliance requirements related to the different types of material generated, which in some

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<sup>1</sup> The current obligation is for 10 per cent of "eligible hours" – see [http://www.bbc.co.uk/commissioning/radio/network/docs/Statement\\_of\\_Operation\\_for\\_Radio.pdf](http://www.bbc.co.uk/commissioning/radio/network/docs/Statement_of_Operation_for_Radio.pdf)

cases – such as visualisation – will present potential issues very far removed from the original radio broadcast.<sup>2</sup>

## 5. Overview

22. The current senior management within A&M has made, and continues to make, strenuous efforts to ensure that compliance measures are effective, widely understood by all those who are subject to them and have to operate them, and to measure performance against these obligations. The practical work has not involved very much change in the nominal systems. It has though meant stringent policing of system observance and notable leadership towards significant cultural changes in the understanding of the importance of compliance across the whole of the BBC production population. Even though we started our review virtually a year after the Ross Brand incident, it was clear to us from everyone we spoke to that the lessons of that had been fully learned, and that work was well underway to implement them. This was reflected in the purposefulness with which those we interviewed approached the tasks of securing compliance.

23. The compliance process itself is simple in intent, but necessarily complex given the range of programme types and sources. The following process map captures the major stages in the life of a typical commission. It is drawn from a number of existing documents, which are variously maintained by the networks, the senior management of the Division, and the legal department. Most of the documents have been revised following Ross Brand, but in some cases that process of revision was continuing while we carried out our review.

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<sup>2</sup> The term ‘visualisation’ refers to the addition of a large amount of visual content to the standard audio offer. The availability of these visualised elements depends on the listener/viewer having computer access, and ranges from relatively low risk text information and song information to more high risk content such as webcam streaming of presenters live on-air.

**Commissioning Phase – applies to all programming/content**

- Both independent and in-house programme ideas are discussed with the Commissioning Editors
- The details of the commission are entered on an electronic system named Proteus
- Risky programmes are placed on a set of Risk Lists
- An editorial figure within the BBC is appointed to manage the production of the programme through to transmission: for in-house productions, this person is called a 'Senior Editorial Figure', for independent productions, this person is called the 'BBC Editorial Representative'

**Contractual phase – applies to independent productions only**

- In the case of independent productions, the BBC enters into a contractual arrangement with the company called a 'Programme Production Agreement'
- The PPA identifies an "Editorially Responsible Person" within the Independent to deal with matters of compliance.
- While it is BBC policy that the Editorially Responsible Person should not be the talent, there is no contractual term prohibiting this.

**Delivery and transmission for live programming**

- For independently produced live programming on the risk list, the BBC Representative must be listening to the programme transmission and be in close contact with the studio, preferably in the same building. They can listen in another suitable location, with the agreement of the Network Controller who informs the Head of Editorial Standards.
- For independently produced live programming which is not featured on the Risk list, the BBC Editorial Representative should listen to the greater part of the programme and should be contactable by the programme to deal with unexpected issues.
- For in-house produced live programming on the risk list, the Senior Editorial Figure will be either in the studio or at the very least close by and easily contactable by the studio.
- There are no specific listening obligations on the BBC for in-house live programming that is not on the risk list.

**Delivery and Transmission for recorded programming**

- All programming (excluding programmes on the A&M Exemption list) must be listened to twice prior to transmission: In the case of independent programming, the Independent's editorially responsible person carries out the first listen and the BBC Editorial Representative carries out the second. In-house programming is listened to first by the programme producer and second by the Senior Editorial Figure
- For independently produced programming, the independent must complete a compliance form and deliver it alongside the completed programme. The BBC Editorial Representative then completes a Proteus form on the independent's behalf
- For in-house produced programming, the producer and the Senior Editorial Figure must both sign the Proteus form before transmission

**Compliance of Interactive / Multiplatform Content**

- The team originating the content is responsible for complying and signing it off even if the content is eventually published by a different team.
- The BBC Editorial Representative has editorial oversight of content supplied by an independent producer, and has regular conversations with the supplier.

24. The compliance process is now underpinned by a series of crucial changes or enhancements that have been put in place following Ross Brand:

- First, the risk inherent in the executive producer role in talent-owned independents is addressed by changes both to the BBC policy, and stringent requirements in the contract about the named and approved, executive producer. This is to ensure strong editorial oversight within the independent production company.
- Second, the requirement for all content – both broadcast and otherwise distributed – to have named senior oversight within the BBC is now clear and unambiguous. Furthermore, it is also clear that the person responsible for taking responsibility is fully aware that it is their role, and must ensure that they have the capacity and time to undertake the serious amount of work involved.
- Third, there is a formal approach to both the creation as well as the use of 'risk lists' to identify potentially risky programmes at network and division level. These lists also feed into the wider, pan-BBC Managed Risk Programme List.
- Fourth, there is widespread use of production department and network meetings to discuss and address potential editorial or compliance problems. These should be instrumental in creating and embedding both a shared editorial understanding as well as a more collegiate approach to compliance.
- Fifth, a number of systems for auditing compliance have been introduced.
  - Every month the Head of Compliance listens to all programmes which were on the MRPL to ensure compliance with editorial standards. In addition she will listen to a number of programmes which were not designated as high risk to ensure that departments and networks are appropriately calibrating risk.
  - A register is kept across all networks of how many compliance forms were not properly completed. Any relevant editorial issues that arise from this audit are followed up with the programme makers and appropriate lessons learned.
  - BBC Internal Audit is conducting a series of monthly spot checks of compliance and reporting to the DDG. The intention is to review this process half way through 2010.
- Sixth, a number of key appointments have been made: a new Head of Editorial Standards has been in place since early 2009, and both executive producers and compliance staff have been recruited in areas where they were needed.

25. The effectiveness of the BBC's compliance system is dependent on the right combination of people and process. In the main, we were impressed by what we saw of both. However, there are four specific instances where we believe that the management of A&M could usefully leverage the energy and focus that exists now to ensure that the system – and the support for those who have to operate it – is fit not only for today but also for the future. We deal with these specific issues in the next chapter.

### III. FOUR SPECIFIC ISSUES

26. The overall picture we have observed in the course of our interviews, and in our examination of the documents, is of a system which, while complex, is unquestionably thorough, with the responsible staff putting it into practice with diligence and effectiveness. We wish to make that very clear at the start of this chapter, because it is important to place the observations that follow within this context.

27. The issues that concern us relate not so much to the situation that applies today, but rather to what could arise in the future, when the aftershocks from Ross Brand have dissipated. Throughout, we have paid attention to how the current arrangements are likely to withstand the inevitable weathering of time. In this respect, there are four areas where we believe it is necessary for the A&M management to take further action now:

- inconsistencies within the process as set out in the relevant documentation
- instances where today's good practice, which has been reported to the Trust in the various submissions made by A&M, is not reflected in mandatory requirements within the compliance system
- instances where practice on the ground is sufficiently close to the edge of the way the formal system is described as to give rise to concern that it may be either unsustainable or undesirable in the long term
- and necessary steps to ensure that the energy apparent today is put to best effect through the training and professional coherence of the key group of executive producers; not only from the BBC's in-house production departments and networks, but also among independent production sector

28. In focusing on these four areas, we are addressing the places where, under pressure, small cracks could prove very significant. Inconsistencies of terminology mean little when everybody is as clear about their responsibilities as they are at present. Good practice is happening now whether it is formally mandated or not; key staff are sustaining very heavy workloads and doing very high levels of listening because they know how high the stakes are at the moment; and executive producers are anxious to learn from each other. However, today's urgency will not necessarily last, and the system needs to be one where good practice is supported by solid process, rather than undermined by small inaccuracies. **We recommend in the following analysis three key courses of action: a 'spring clean' of compliance processes; further attention to training; and a periodic review to catch variations in practice and circumstances, as well to deal with future changes.**

#### 1. Inconsistencies within the process

29. In the course of our review, we have seen many hundreds of pages of relevant paperwork and, perhaps inevitably, there are some inconsistencies. The project of reworking processes across networks, production departments and divisions, as well as changing contracts to incorporate the key changes outlined in the previous chapter, has been significant and heavy, even though the actual compliance process itself has changed little.

30. Many of the inconsistencies, which are set out in Annex A, are in themselves very minor, and we have discussed them with the management of A&M, whose responses are also included in the Annex. However, we judge that three specific concerns are significant enough to merit being picked out, to ensure that they are addressed in the next revision to the paperwork, which needs to be carried out with dispatch.

(i) named roles

31. The contract for independent productions (the Programme Production Agreement or PPA) requires the naming of two key executives for the purposes of compliance, in addition to the producer: an Editorially Responsible Person appointed by the independent; and an Editorial Representative appointed by the BBC. However, the Additional Contract Terms – which amplify or modify the PPA – require that the compliance form be delivered “for approval by the BBC’s Commissioning Editor ... simultaneously with delivery of the programme”. While it is highly likely that in many cases the Commissioning Editor may also be the named Editorial Representative, it is by no means automatic.

32. There is also a lack of clarity in the Proteus form that must accompany all pre-recorded programmes, where the titles for those required to approve the programme do not necessarily tally with the titles as set out in the contracts. In extreme circumstances, this lack of clarity could present a point of weakness. Fortunately, it can be very easily resolved in the next iteration of the paperwork. **We recommend that all the named roles in compliance documents are re-written to reflect actual practice.**

(ii) risk management

33. The compiling and use of lists of programmes which pose editorial or compliance risks is widespread and welcome. There is a hierarchy of such lists. Networks build their own, arising from both the information captured at the point of commission as well as intelligence that emerges during the production stage. Some of these programmes will then find their way on to the A&M Risk List, a list of programmes from across all networks. This central document is managed by the Head of Editorial Standards and discussed at the weekly Controllers’ meeting. Atop of this all is the pan-BBC Managed Risk Programmes List (MRPL), where programmes from across all BBC output that pose serious reputation risk are gathered and overseen by Editorial Policy.

34. Within this otherwise robust system, an apparently small concern arises in relation to the responsibility for ensuring that a programme is placed on the A&M Risk List. The compliance check list says that the BBC's Editorial Representative "is responsible for putting programmes on the list". However, the Executive Producers and Editors' Editorial Standards document sets out that the "EP will make recommendations about adding the programme to A&M's Risk List including the pan-BBC MRPL [Managed Risk Programme List]". This imprecision as between "putting programmes on" and "making recommendations about adding" programmes is precisely the sort of detail that, at present, is unproblematic, but which, in future, could be a point of weakness under stress. It is also another risk that is easily eliminated. **We recommend that the documentation should make clear who is responsible for placing programmes on the A&M Risk List, and the individual network risk lists.**

iii) number of listens

35. The Recorded Programmes Compliance Policy (RCP) specifies two mandatory listens for both in-house and independent productions, and it is clear about who has to do them: the producer and a 'senior editorial figure'. For in-house programmes, the 'second listen' is undertaken by the executive producer (or equivalent) within the production department, although the network may also elect to listen again to a programme ahead of transmission (for example if it is considered particularly risky, or if circumstances have changed with regard to scheduling). For independently produced programmes, we were told that, although not a formal requirement of the compliance policy, three listens was in fact the norm: a 'second listen' by the independent executive producer, with the final listen carried out by the senior BBC editorial figure at the commissioning network.

36. While the practice seems clear enough, and moreover is working well, it is not reflected in the on-line Proteus form, completion of which is required for all programmes, both in-house and independent. This appears to require three approvals, to be given by the producer, the executive producer, and the representative of the receiving network. Paradoxically, while this reflects practice in relation to independent productions, the form is currently not available to independent producers, who instead complete a separate compliance form – which only requires a single approval from the independent producer. The Proteus form itself is then filled out by the receiving BBC executive.

37. This lack of absolute clarity could leave room for uncertainty which, *in extremis*, could give rise to increased risk. There is no current evidence of skimping in the degree of scrutiny given to individual programmes, and the contractual requirement that the independent producer certify the programme is compliant, coupled with a mandatory listen when the programme is received by the BBC, is clear and almost certainly sufficient. But small inconsistencies may, over time, widen



into bigger inconsistencies, and again could be easily amended. **We recommend that the Proteus form and the RPCP requirements should be made fully consistent; including contractual nomenclature; and further, that the Proteus form should be made available to independent producers to complete for themselves.**

## 2 Relationship between formal documentation and A&M practice as reported to the Trust

38. As noted above, the BBC Trust asked the Director General and the management of A&M to report on how they were strengthening the necessary processes and practices within the Division exposed by the original Ross Brand incident. These changes were reported to the Trust following the audit carried out by the senior management of A&M in the spring and summer of 2009. Taken together, they present an impressive picture of a management gripping the issue and making serious demands of the whole production process to ensure that there could be no further repetition of the same, avoidable failures. These undertakings, too, came on top of other reports offered by the management of the Division in response to earlier compliance problems, all of which add up to a detailed list of requirements that the Trust has every reason to believe are now established and mandatory practice within A&M.

39. We have every reason to suppose that they are fully observed at present. Our concerns centre upon the risk that undertakings which do not match published compliance process could in time lapse. Unless put right, the BBC Trust would legitimately expect them still to be both common, and audited, practice, and have every reason for its own concern if that was shown not to be the case in a subsequent event.

40. We have identified a number of areas where the processes committed to by BBC Management are not wholly consistent with internal BBC documents. A full list of inconsistencies can be found in Annex A. For the most part, these issues are unlikely to be of concern. However, we believe the management of A&M should consider amending their process paperwork to cover the practices described to the BBC Trust. Two specific instances may be of concern moving forward and both relate to live programming, where the strictness of approach in requiring supervision by the BBC representative is not matched by formal requirement in all the Statements of Practice for the networks:

- The first relates to compliance requirements for live independently produced programming. BBC management has set out in its commitment to the Trust that 'the BBC person responsible will in most cases listen to the greater part of the programme and should be contactable by the programme to deal with unexpected issues. However, the Network's Statements of Practice, are not consistent with this commitment. For example, in the case of Radios 2 and 6 Music, the Statements of Practice set out that programming must simply be 'produced under the guidance of a Producer'.

- The second relates to compliance processes for 'risky' independently produced programming. BBC management has set out in its commitment to the Trust that "for all live indie programmes which are on the A&M risk list, or the BBC MRPL, the BBC person must be listening to the programme transmission and will be in close contact with the studio preferably being in the same building." However, Radio 3, 5 Live and Radio 1's Statements of Practice do not set out this requirement.

Given that live programming may be among the riskiest, and given the strength of the undertakings offered to the Trust, **we strongly recommend that in the case of live programming, the formal documentation should be made to reflect the undertakings given to the Trust.**

41. The undertakings given to the BBC Trust are not the only commitments made by A&M over recent years. This is an appropriate moment to make sure that all such commitments are being observed, or if circumstances have since changed that this has been made clear. **We therefore recommend that the management of A&M should also take this opportunity to review all the undertakings it has given since the end of 2003 to the different regulatory bodies – the BBC Governors, the BBC Trust and Ofcom – to re-assure itself that they are appropriately underpinned with relevant formal requirements in the compliance processes.**

### 3 Process and Practice

42. In all our interviews, we asked about whether the processes now in force go with the grain of sensible production practice, on the grounds that – where they did not – there was greater danger that, over time, the process would become diluted or adapted. Nothing in the responses we received led us to believe that staff have any intention of seeking to evade the very high level of editorial responsibility that the BBC places upon them. However, we were made aware of instances where the very strict requirements of the process might run counter to the grain of production and programme management in practice.

#### (i) final listen

43. It is an absolute requirement that the senior BBC editorial figure must listen to the final, edited version of every pre-recorded programme, or insert of greater than 15 minutes duration, broadcast by the BBC, as well as all material distributed via other means (on-line, pod-casts, visualisation etc). The only exception to this is if the programme appears on the A&M 'Exemption List'<sup>3</sup>. The Proteus form requires the senior editorial figure to confirm they have listened to the final version before

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<sup>3</sup> Programmes which appear on this list do not pose any compliance concerns and therefore do not require the second listen. The Head of Editorial Standards manages this 'Exemption List' on a regular basis and adds programmes as appropriate. For example, pre-recorded concerts which have been listened to in full during the live broadcast by the senior editorial figure are frequently added to the exemption list as a second listen is deemed unnecessary.

broadcast or other distribution: in those instances where they do not consider it necessary to do so, they must state the reason why.

44. However, an executive producer might reasonably consider it editorially more valuable to be present for the studio recording of a programme (when they could better influence the final editorial content) rather than waiting to listen to the final edit. If those edits were essentially to bring the programme to the appropriate length and were carried out according to instructions given by the executive producer, it is hard to argue that having to listen yet again once the work is completed is an appropriate requirement, or a good use of scarce time. This is especially so where such editing is not for the purpose of achieving compliance, but just to fit material into a shorter length (where that, in itself, does not raise compliance issues). Further examples mentioned to us included instances where material is being prepared for a podcast, when the executive producer has heard all the material to be included, and all that remains is for the podcast to be edited to the necessary duration, and shortening does not raise compliance issues. To require them then to wait until the editing is done, and then to listen once again to material they have already heard, may seem to them otiose.

45. There is some discretion allowed within the Proteus form. Executive producers are entitled to forego the final listen, provided they give adequate reasons. Our concern, however, is that this is clearly not intended to be the norm. Were it to become routine, either in relation to specific programmes or specific types of programme, we believe that should be properly reflected in the formal process. **We therefore recommend that the position with the ‘final listen’, where an executive producer chooses to be present in the studio for the final recording, should be clarified with a view to easing that compliance burden where it can be done without undue risk.**

46. Although this was the only instance of a production practice which seems reasonable but which might actually conflict with the procedures laid out in the compliance process, it is reasonable to suppose that, over time, other similar instances will occur. It is for this reason that we recommend that the compliance process itself be subject to more regular and more dynamic review, to ensure that it still fits well with accepted, and acceptable, production practice.

(ii) the role of the compliance editor and independent production

47. The most immediate attention is needed in one instance where current practice, while technically compliant with the process as described in the formal paperwork, is nevertheless routinely using an exemption rather than the norm. In the course of our review, it was made clear to us that Radio 4’s common practice, reflected in its “Compliance Policy for Recorded Programmes” is to devolve responsibility for all the contractual and compliance requirements including the ultimate approval for independent productions to the network’s Compliance Editor, rather than the executive named in the commissioning and contracting material – typically the Commissioning Editor. Either the practice needs to be brought into line

with the formal system, or – more sensibly – the formal system needs to be amended to reflect the established practice.

48. There may be sound reasons for this, not least the workload involved for the commissioning editors in Radio 4, the network which carries the bulk of independent commissions. Moreover, the compliance editors may well have been most closely engaged with the programme makers throughout the production, and therefore best placed to approve the final programme (although in some higher profile or more potentially contentious programmes, this role is retained by the commissioning editor or executive, or the network controller).

49. We do not doubt the validity of either or both of these reasons, and we were struck by the dedication and commitment of the staff involved and their determination to ensure that the BBC and its audiences are adequately protected. We also note that the BBC representative named in the contract is entitled to devolve the responsibility for editorial approval to another named individual, provided the independent has been notified, and we observe that, in the case of Radio 4 at least, that the Compliance Policy is explicit in stating that the Compliance Editor typically takes on this role. Nevertheless, we are concerned that the process set out as standard in the contracts may not be the standard practice on the ground, since we believe that, in an extreme case, such as Ross Brand proved to be, it is the mismatch between the two that can create the greatest uncertainty, and therefore potentially lead to avoidable risk. **We recommend that the standard contracts be amended to make clear who in practice is responsible for the ‘final listen’ to pre-recorded independent productions.**

#### 4 Training, and the role of the ‘executive producer’.

50. The role of the ‘executive producer’ has historically been less well developed in some areas of radio production than in television. Radio production teams are smaller than their television counterparts, and a very high proportion of the output is live, which has resulted in a less consistent evolution of the role across the radio production landscape. Even the term ‘executive producer’ is by no means universal (although we use it here to refer to the role actually carried out by staff with differing titles). Nevertheless, we found universal support for the view that the ‘executive producer’ is the absolute lynch-pin for good compliance.

51. Over time, but with increased urgency over the last year, job descriptions have been changed and practical duties adjusted to meet the enhanced demands of the role, and we were given evidence of appointments being made in areas where the body of executive producers was previously under strength. However, there are challenges in areas where the most senior producers – who might have enjoyed the title of executive producer already – nevertheless had not been expected to exercise executive responsibility for programmes other than their own direct output. We do

not underestimate the difficulty of implementing this change, and were impressed by the vigour with which it was being led from the top and implemented.

52. In particular, we were struck by the evidence we heard about meetings held within production areas and networks which addressed specific editorial issues; near misses, or actual problems. We were also impressed by the way that the executive producers were being included within the senior management and direction of networks where that had not typically been the case before. We believe that the value of creating a common body of editorial experience at executive producer level, and ensuring a properly trained and cohesive group of senior editorial staff both within and outside the BBC, could be of immense value, not least as the folk memory of Ross Brand fades. **We recommend that continued resource and attention should be devoted to defining the role of the executive producer, and to developing a cadre of staff capable of undertaking this role and establishing and exchanging best practice.** The observations and recommendations which follow indicate where we believe this continued resource and attention should be directed as a matter of priority.

53A. This approach places a premium upon training. The BBC already makes it a mandatory requirement that everybody involved in production for the BBC, including independent producers, must have completed the relevant parts of the Safeguarding Trust training. As part of management efforts to change the cultural attitudes towards compliance within the directorate, and to ensure professional coherence, A&M is now embarking on a training programme for senior editorial figures, the centrepiece of which will be a three day off-site course on "Creative Leadership". This is self-evidently appropriate and welcome. Fifteen months after Ross Brand, however, it is also overdue. This delay in implementing these training plans has made additional demands for oversight and direction on the most senior staff of the Division.

54. We understand that the BBC Academy runs all training and includes the College of Journalism and the College of Production (which has been up and running for some 9 months). The pilot for the creative leadership course was only due to take place as we were finalising our report, November 2009. Following on from this, there will be an ongoing series of monthly Executive Forums. The aim is to ensure that all staff at this senior level attend the course and the subsequent forums, and that the training will subsequently be made available as a series of downloadable web modules, as part of the BBC's College of Production. The course is intended to include training on working with talent, and how to identify and manage editorial risk. Consideration is also, we were told, being given to including training on complaints handling, and to formal one-to-one training of on-air talent in legal and editorial issues. This is in addition to informal training of talent which we were told would take place when it is considered necessary. **We recommend that the creative leadership course now under development be completed for all A&M staff undertaking the executive producer role by the middle of 2010 at the latest.**

55. Both News and Sport have their own editorial leadership training provided through the College of Journalism. Among those from other directorates than A&M who have comparable executive producer staff for their radio output, this course is only currently intended to be made available to staff from Comedy (which is managed from within BBC Vision). **We recommend that the College of Production should ensure that both the principles and the detail of its executive producer creative leadership course are reflected in the training offered to those in News, Sport, Comedy and elsewhere who take responsibility for radio output.**

56. We understand that consideration is now being given to arranging bespoke sessions with commissioning editors, and that there may in due course be sessions for independent producers. This is clearly not a straightforward matter, but in our view the failure to include as many internal relevant BBC people – and particularly those from the independent sector – in this training initiative, diminishes its value in improving compliance awareness across the board. **We recommend that urgent consideration should be given to establish how executive producers working in independent production companies can be given appropriate access to important components of the creative leadership training.**

#### 5. Conclusions and further recommendations regarding the current process

57. Now that A&M has had time to implement the processes fully, this is the opportunity to take stock and consider if there are acceptable production practices that vary slightly from the process as written down; and, if so, what safeguards should be put in place to ensure that they stay within acceptable limits. This might mean easing back on some of the detailed requirements which are most irksome, or not routinely necessary, and therefore most likely to be set aside unofficially. Better then to do that properly, and to ensure appropriate criteria and safeguards for such relaxation.

58. For all of the issues which we have identified, we believe the solutions are straightforward, but will require the management of A&M to commit to a process of tidying up. **We therefore recommend a thorough ‘spring clean’ of the compliance processes, to ensure that internal inconsistencies are resolved, that actual practice and written processes are brought into line.** There is much that is good, but there are enough things to be tidied up to make such a process worthwhile. **We further recommend that the management of A&M should take the opportunity of that ‘spring clean’ to address those instances where practice is at the outer limit of what is permitted, either to bring it back within the norm that is described by the policy, or to adjust the policy to align itself more exactly with acceptable practice.** It is in our view a matter for management which of those two routes is better – and that may well vary for individual items – but **we recommend that the management should notify the Trust what changes they have made as a consequence.**

59. In carrying out this 'spring clean', we recommend that management should consider a number of changes to the formal compliance systems as presently implemented:

- establishing acceptable production exemptions – with clear and well defined criteria – which could sit alongside the programme exemptions and could therefore allow producers to relax the very strict requirements on the mandatory final listen. Additionally, **we recommend that individual networks should define their own criteria for these production exemptions to be agreed with the management of A&M and fully captured in the relevant paperwork**
- complementing the current management and internal audit process with something less regular but more dynamic. The current approach chiefly captures whether the compliance forms have been filled out: it does not necessarily address whether the process still fits with best production practice. **We recommend a periodic review which can recommend adjustments as necessary.** The further away from an editorial 'shock', the more such periodic oversight will be needed.
- keeping the working parts of the compliance process as live as possible. This applies particularly to the risk lists, and to the discussion of near misses as well as actual problems. We were struck by the seriousness of the risk lists maintained both by the networks and by the Division. However, we were also struck by their length, and by the amount of time that a programme might be on the list. The longer something sits on a list, the easier it is to assume it is all being dealt with by someone else. **We recommend that keeping the risk lists well maintained, relevant, and action oriented – whether it be through greater scrutiny, additional listening, or more regular reporting – should be considered a priority.**

#### IV. FUTURE PRESSURES

60. The issues raised in the previous chapter are those which, when judged in the context of the inevitable passage of time, could give rise to foreseeable risk, and which could be adjusted now. In this concluding chapter, we reflect on what has also become very clear in our conversations and interviews: that the future will increase, not alleviate, the potential for risk, which makes the case for taking action now to get the process completely tidy even stronger. We have noted five inescapable future developments, each of which will have a significant bearing on how compliance is carried out in future, and against which any future assessment of the BBC's approach will need to be tested.

##### 1. The move to Salford

61. We have already referred, in chapter II, to the organisational complexity of the BBC. The current structure consists of five London based network commissioning centres, taking in product from a wide range of different production departments, both in-house and independent, and each operating their own variant on a very strong core of common compliance practice. All of the networks nevertheless report to the Director of A&M, thus preserving a single, central point of authority and control. A good working relationship between senior individuals in A&M, News and Sport currently ensures that any compliance risks between the Divisions are given full attention.

62. However, the imminent move of one of those network centres to Salford and the accompanying change of reporting lines will introduce a further complexity into these arrangements. The move there of Radio Five Live – and also Sport which both provides and compiles significant parts of radio output – is of especial note in this context. We have no reason to suppose that the moves in themselves will have any material impact on compliance: Nevertheless, increased complexity in the reporting arrangements will make it even more important that the processes in force should be clearly and unambiguously described. This is important, not only for the programme-making community, but also for the management of A&M, the body responsible for enforcing them and therefore accountable – to the management, the Trust and most importantly the audience – for their implementation. **We recommend therefore that the 'spring clean' of compliance processes should also look forward to the implications of the Salford move. We recommend this should include consideration of the appropriate degree of formality in the contacts between radio network controllers and their opposite numbers in News and Sport on shared compliance issues well ahead of the move.**

##### 2. Growing pressure on resources

63. We have been made aware in the course of our review that there are significant resource implications of the existing compliance processes, especially in relation to independent production. This is especially the case in Radio 4 where, by



virtue of the sheer volume of individual commissions, as well as the editorially and journalistically hard edge in much of the output, the demands made on executive production time are very considerable. **We recommend that the compliance workload in Radio 4 should be reviewed and extra compliance resource should be allocated as appropriate.**

64. Independent producers told us of a budgetary approach which applies a fixed rate for executive producers, linked to the duration of the final programme. This potentially disadvantages smaller or specialised independent producers, who cannot flex the executive producer budget line across a range of different programmes. There may also be limitations in the availability of appropriately trained and qualified individuals, especially for some of the harder edged factual and drama commissions. **We therefore recommend that A&M management should re-consider its expectation of the role of executive producers in independent production companies, and review the budget allocation for this role in the commissioning process.**

65. The pressure on BBC resources is already heavy. It is unlikely to get any lighter overall. The BBC will face increasing pressure to focus ever more of its spending onto actual content and away from 'overhead' costs. We have already, anecdotally, been told that compliance staffing was identified as an area of potential savings before the incidents of last October. It is not the purpose of this report to argue the case for more resource spend on compliance staffing, but we wish to reflect what we have observed – which is that the system, as it is currently being operated, leaves little room for slack.

### 3. Potential increases in independent production quotas

66. The BBC is currently under no statutory requirement to commission independently produced radio programmes, although the Trust requires the commissioning of a minimum level of 10 per cent. The radio independent market is very different from the market for television independent producers. The BBC is by far the biggest commissioner of programmes, and BBC networks represent virtually the only substantial opportunity for independent producers. It would therefore fall to the BBC alone to shoulder the burden of creating a larger, and more financially sustainable, independent sector. While calls for a statutory quota have thus far been resisted by government, it is certainly plausible that the BBC Trust will come under even more sustained pressure in future to require more of BBC Radio's airtime to be reserved for independent production.

67. We cannot help but note that the majority of the issues we have identified apply either directly, or with particular force, to the way the system operates for independently produced programmes. Any adjustment upwards of the level of independent commissioning would make it all the more important that those pressures – particularly the available level of in-house editorial compliance in the network that bears the brunt of commissioning, Radio 4 – should be properly identified by management and addressed. **We recommend that a periodic review of**

compliance should consider the impact of any increase in the requirement for independent production of radio output.

#### 4. New media

68. The pressures on compliance in new media are potentially more significant even than in conventional, linear broadcast. Broadly speaking, the broadcaster can no longer control the environment in which the content is viewed or listened to, and the critically important tool of scheduling is no longer relevant. Instead, a whole new set of issues emerge: including the longevity of material stored on-line; the availability of the content to audiences for whom its original broadcast was not intended; and the lack of a broad consensus about the degree of personal responsibility required of the audience – in place of the widely understood ‘watershed’ concept, or its radio equivalent.

69. These issues, already challenging, are compounded by sheer volume. The already significant amount of broadcast material which must be complied by staff in Audio and Music is accompanied by an increasing amount of additional, related, but not broadcast material which must also abide by strict compliance rules. It includes added text content and additional features such as visualisation, as well as other editorial and promotional developments. This trend is unlikely to reverse. The increasing ability of technology to deliver content in different ways means that the BBC and its programme makers will be under pressure to use new means of distribution to reach audiences with relevant and attractive content.

70. The fact that one, at least, of the significant editorial failures of last October took place on an accompanying on-line video stream, emphasises the need to ensure that it is not only the original broadcast that receives editorial oversight. In the interviews we carried out, and the material we saw, it was clear that there are arrangements in place to secure this. However it represents another future challenge; significant increases in the level of on-line content, either repurposed or original, will increase the pressure on the system. **We recommend that the growing implications of new media associated with radio output should be addressed in any periodic review of the operation of the compliance process.**

#### 5. The passage of time

71. It is inevitable that the energy and focus we observed during our review will be diluted by the simple passage of time. Thus our most significant findings come from the perspective of the process when viewed from several years on. The Trust, and the management of A&M, can take heart from the near unanimity among our interviewees that the current approach was sensible and proportionate. Nevertheless, even given the best of intentions, the production community will seek to soften what seem to be unnecessarily hard edges; indeed, as noted above, some such instances may already be emerging.

72. We do not for a moment advocate removing any control that would expose the BBC to unacceptable levels of risk, but any compliance process contains its own risk if it does not develop organically. A rigid and ossified system can have at least two undesirable consequences: first, it can mask a range of practical, but unrecorded, 'workarounds' which may mostly work well but which would not survive the harsh light that would follow a serious compliance failure; and second, it can undermine the individual responsibility of those lower down the editorial chain if they feel they have to rely always on the editorial judgement of others. These dangers are neither new, nor wholly avoidable. Any compliance system must balance the adherence to a formal process with encouraging individual responsibility and judgement. In the end, the single absolute requirement for any compliance system to function is a strong and shared sense of editorial purpose and understanding. **We therefore re-state our recommendation for a periodic review of the practical details of the compliance systems to catch the inevitable changed requirements of the future, rather than waiting for a major incident to trigger such renewed attention.**

## V. SUMMARY OF RECOMMENDATIONS

1. We recommend three key courses of action: a 'spring clean' of compliance processes; further attention to training; and a periodic review to catch variations in practice and circumstances, as well as to deal with future changes. (paragraph 28)

### Spring clean of processes

2. We recommend a thorough 'spring clean' of the compliance processes, to ensure that internal inconsistencies are resolved, that actual practice and written processes are brought into line. (paragraph 58)

3. The management of A&M should also take the opportunity of that 'spring clean' to address those instances where practice is at the outer limit of what is permitted, either to bring it back within the norm that is described by the policy, or to adjust the policy to align itself more exactly with acceptable practice. Management should notify the Trust what changes they have made as a consequence. (paragraph 58)

4. We recommend that all the named roles in compliance documents are re-written to reflect actual practice. (paragraph 32)

5. The documentation should make clear who is responsible for placing programmes on the A&M Risk List, and the individual network risk lists. (paragraph 34)

6. The Proteus form and the RPCP requirements should be made fully consistent, including contractual nomenclature; and further, the Proteus form should be made available to independent producers to complete for themselves. (paragraph 37)

7. In the case of live programming, the Network's Statements of Practice should be reviewed bringing them in line with current practice and the commitments made to the BBC Trust. (paragraph 40)

8. The management of A&M should also take this opportunity to review all the undertakings it has given since the end of 2003 to the different regulatory bodies – the BBC Governors, the BBC Trust and Ofcom – to re-assure itself that they are appropriately underpinned with relevant formal requirements in the compliance processes. (paragraph 41)

9. The position with the 'final listen', where an executive producer chooses to be present in the studio for the final recording, should be clarified with a view to easing that compliance burden where it can be done without undue risk. (paragraph 45)

10. Standard contracts should be amended to make clear who in practice is responsible for the 'final listen' to pre-recorded independent productions. (paragraph 49)
11. Management should consider a number of changes to the formal compliance systems as presently implemented, including:
  - that individual networks should define their own criteria for these production exemptions to be agreed with the management of A&M and fully captured in the relevant paperwork
  - a periodic look at whether the process still fits with production practice, and can recommend adjustments as necessary. (paragraph 59)
12. Keeping the risk lists well maintained, relevant, and action oriented – whether it be through greater scrutiny, additional listening, or more regular reporting – should be considered a priority. (paragraph 59)
13. The compliance workload in Radio 4 should be reviewed and extra compliance resource should be allocated as appropriate. (paragraph 63)
14. A&M management should re-consider their expectation of the role of executive producers in independent production companies, and review the budget allocation for this role in the commissioning process. (paragraph 64)
15. The 'spring clean' of compliance processes should also look forward to the implications of the Salford move. We also recommend that some formality should be introduced into the contacts between radio network controllers and their opposite numbers in News and Sport on shared compliance issues well ahead of the move. (paragraph 62)

#### **Training and related issues**

16. We recommend that continued resource and attention should be devoted to defining the role of the executive producer, and to developing a cadre of staff capable of undertaking this role and establishing and exchanging best practice. (paragraph 52)
17. The creative leadership course now under development should be completed for all A&M staff undertaking the executive producer role by the middle of 2010 at the latest. (paragraph 54)
18. The College of Production should ensure that both the principles and the detail of its executive producer creative leadership course are reflected in the training offered to those in News, Sport, Comedy and elsewhere who take responsibility for radio output (paragraph 55)

19. Urgent consideration should be given to establish how executive producers working in independent production companies can be given appropriate access to important components of the creative leadership training. (paragraph 56)

**Periodic review**

20. We recommend that a periodic review of compliance should consider the impact of any increase in the requirement for independent production of radio output. (paragraph 67)

21. The growing implications of new media associated with radio output should be addressed in any periodic review of the operation of the compliance process. (paragraph 70)

22. We recommend a periodic review of the practical details of the compliance systems to catch the inevitable changed requirements of the future, rather than waiting for a major incident to trigger such renewed attention. (paragraph 72)

**Annex A: Audit of compliance processes and management response**

**1: BBC commitments to the Trust compared to formal BBC requirements:**

Stage of Compliance Process	BBC Documents (if relevant)	Process described in report to the Trust	Assessment of BBC practice/formal requirements at point of audit, November 2009	BBC Executive response December 2009
<b>Appointment of editorial figures</b>	<ul style="list-style-type: none"> <li>• Compliance Checklist</li> <li>• Programme Production Agreement</li> </ul>	<p>"Each independent production should have a named person, agreed by the BBC, as the Producer, and if required, a named person, agreed by the BBC, as Executive Producer."</p>	<ul style="list-style-type: none"> <li>• None of the formal BBC policy documents or contracts requires the appointment of a producer within the independent. Rather, they require the appointment of an 'editorially responsible person' who may or not be a producer or exec producer.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that the BBC does not require the appointment of an independent producer and that this commitment has not been met. However, there are good reasons why this has not happened: in practice, this commitment proved unworkable as it has not been possible to appoint a named producer for all programmes. Therefore, the Executive introduced the concept of an "Editorially Responsible Person" instead.</li> </ul>
<b>Compliance process for live independent programming</b>	<ul style="list-style-type: none"> <li>• Radio 6 and 2 Statement of Practice</li> <li>• Radio 1 Statement of Practice</li> <li>• Radio 3 Statement of Practice</li> <li>• 5Live Statement of Practice</li> </ul>	<p>"For all live indie programmes, the BBC person responsible, in most cases, should listen to the greater part of the programme and should be contactable by the programme to deal with unexpected issues."</p>	<ul style="list-style-type: none"> <li>• The Statements of Practice do not require that the BBC person responsible listen to the greater part of all live programme as set out in the Executive's report to the Trust – rather the programme must be made under the 'guidance' of the 'Senior Editorial Figure'. Specifically:             <ul style="list-style-type: none"> <li>– Radio 6 and 2 Statement of Practice set out that 'All Live Programmes produced by an independent production company are produced under the guidance of a Producer and/or an Executive Producer from the Independent (as laid out above) with the additional safeguard of a nominated Senior Editorial Figure'.</li> <li>– Radio 1 Statement of Practice sets out that Independent live programmes are editorially managed 'in the same way as in-house productions'</li> <li>– Radio 3, 5Live's Statements of Practice do not indicate whether or not the BBC person responsible must listen to the greater part of the live independent programming.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that the Statements of Practice are currently inconsistent with the commitment given to the Trust. However, the commitment has been met in practice and the BBC person responsible does listen to the greater part of all live independent programmes. The Statements of Practice will be updated shortly to reflect the current practice. Consideration is being given to introducing a standard Statement of Practice template for each of the networks.</li> </ul>

<p><b>Compliance process for 'risky' independent programming</b></p>	<ul style="list-style-type: none"> <li>• Radio 6 and 2 Statement of Practice</li> <li>• Radio 1 Statement of Practice</li> <li>• Radio 3 Statement of Practice</li> <li>• 5Live Statement of Practice</li> </ul>	<p>"For all live indie programmes which are on the A&amp;M risk list, or the BBC MRPL, the BBC person must be listening to the programme transmission, and will be in close contact with the studio, preferably being in the same building"</p>	<ul style="list-style-type: none"> <li>• While Radio 6 and 2 Statements of Practice are consistent with the Trust's commitment, Radio 3, 5Live and 1 do not set this out.</li> </ul>	<ul style="list-style-type: none"> <li>• As above, agreed that the current Statements of Practice are not consistent with the commitments to the Trust. However, in practice, this commitment has been met and the Executive is planning to update the Statements of Practice to reflect this.</li> </ul>
<p><b>Statements of Practice</b></p>	<ul style="list-style-type: none"> <li>• Statements of Practice</li> </ul>	<p>"Networks and programmes have reviewed and re-issued their Statements of Practice. They are available on the intranet for all staff and will be reviewed and updated on a regular basis."</p> <p>"New Guidance for live programmes has been issued and is attached as appendix 2. Networks and programmes have been asked to review and re-issue their own statements of practice in light of this guidance and are attached as schedule 3."</p>	<ul style="list-style-type: none"> <li>• The current Statements of Practice are not consistent with the commitments made by the Executive to the Trust.</li> <li>• There appears to be inconsistency as to whether the Statements of Practice are for live programming only or for all programming: the Statements for Radio 2 and 6 contain guidance on complying recorded programmes; we were given documentation that clearly stated the Statements were for live programming; and there appeared to be a different understanding on this matter as between the Head of Editorial Standards and his deputy.</li> <li>• This is easily remediable but currently leaves potential for confusion.</li> </ul>	<ul style="list-style-type: none"> <li>• The Executive is aware that the Statements of Practice need to be updated and is planning to do so as set out above.</li> </ul>
<p><b>Induction process</b></p>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<p>"As part of the induction process, line managers are required to discuss the compliance procedures any particular programme has in place with any new member of staff or freelance being used"</p>	<ul style="list-style-type: none"> <li>• While this may be happening informally, we were given no evidence to suggest that this is happening as part of a formal induction process.</li> </ul>	<ul style="list-style-type: none"> <li>• While this induction process is informal, it is nevertheless very effective and does take place for both in-house and freelance staff.</li> </ul>
<p><b>Proteus</b></p>	<ul style="list-style-type: none"> <li>• Proteus Form</li> </ul>	<p>"The Group has introduced a new compliance form on Proteus....it is more user friendly and contains a specific section on interactivity"</p>	<ul style="list-style-type: none"> <li>• The compliance form is not entirely new - rather some additional features have been added to the original form. The form now has a traffic light system which allows the network to determine at a glance what stage in the compliance process a programme has reached - for example, whether a programme has received a sufficient number of approvals. There is also a new question on privacy. The section on interactivity was introduced as a result of compliance breaches in interactivity and competitions which was prior to Ross Brand.</li> </ul>	<ul style="list-style-type: none"> <li>• The introduction of a traffic light system is a significant change which makes it much easier to audit the programmes and keep track of compliance levels.</li> </ul>



<p><b>Contractual training requirements</b></p>	<ul style="list-style-type: none"> <li>• Programme Production Agreement</li> </ul>	<p>“ The Independent is responsible for ensuring their staff have had the required training and the BBC should have a note of the training level and status of the named staff. This person should be verified by the BBC person responsible for the independent”</p>	<ul style="list-style-type: none"> <li>• This commitment suggests that there is a formal list identifying the training levels of all independents. However, our understanding is that the BBC person responsible does not hold a formal list – rather, the independent is required to show a certificate indicating they have completed the training if requested to do so by the BBC.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that this commitment has not been formally met. However, efforts are being made to formalise this and progress is underway.</li> </ul>
<p><b>EP Forum</b></p>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<p>“Editors, EPs and other senior editorial figures including Commissioning Editors from across the group will be invited to a regular forum where editorial issues will be discussed. The aim will be to share learnings”</p>	<ul style="list-style-type: none"> <li>• These EP forums have not taken place yet.</li> </ul>	<ul style="list-style-type: none"> <li>• The EP Forums are now underway – the first forum took place on 15 December 2009.</li> </ul>
<p><b>Training initiatives</b></p>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<p>“Training support is being developed to include:</p> <ul style="list-style-type: none"> <li>- An editorial leadership course, probably in partnership with BBC Vision delivered by College of Production</li> <li>- Training in working with talent</li> <li>- How to identify and manage risk....</li> <li>- Editorial issues around visualisation of radio programmes (aimed at both A&amp;M and radio programme teams)</li> <li>- Lunch-time open sessions....</li> <li>- Producer lab creativity</li> <li>- How to answer complaints</li> <li>- New joiners packs and mandatory courses”</li> </ul>	<ul style="list-style-type: none"> <li>• The first editorial leadership course (now termed the Creative Leadership course) took place in late November 2009. Eight senior editorial figures have to date received this training out of 80. Executives from Vision who supply comedy programming to A&amp;M will be included in the course but not those from News or Sport and not Commissioning Editors for independent programmes.</li> <li>• Many of the additional proposed training initiatives have not been begun in earnest or have not been formally commissioned.</li> </ul>	<ul style="list-style-type: none"> <li>• Significant progress has been made in training: almost all of the proposed initiatives are underway and they are being rolled out throughout A&amp;M. For example, although Commissioning Editors are not among those intended to attend the Creative Leadership course there is now a plan to create modules specifically for this group of staff, to be spread over three days.</li> <li>• All of the subject areas set out in the Executive’s commitments to the Trust are now included as parts of the Creative Leadership course or in lunchtime sessions or the producers lab.</li> </ul>

<p>Training for talent</p>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<p>“Consideration is being given to providing on-air talent with editorial and legal training which will be delivered in 1 to 1 sessions”</p>	<ul style="list-style-type: none"> <li>It is our understanding that this may be happening as part of an informal pre-production discussion, but that if so, it may not be across the board for on air talent.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed with this assessment. However, stressed that while this may not happen formally, compliance issues are discussed with talent on appropriate occasions, and there have also been more formal conversations with some individuals where this has been necessary.</li> </ul>
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**2: Apparent inconsistencies within BBC documents**

Stage of compliance process	Relevant documents	Issue/Question	Classification of issue	Suggestion for improvement	BBC Response December 2009
<p>Contract</p>	<ul style="list-style-type: none"> <li>The General Terms</li> </ul>	<ul style="list-style-type: none"> <li><b>The contract has not clearly defined all relevant individuals in the General Terms:</b> <ul style="list-style-type: none"> <li>While the contracts have been amended, we have noted that the roles of the ‘Producer’ and ‘Editorially Responsible person’ do not seem to be defined in the General, Additional or Special Terms. This absence is more notable because the contracts do define the ‘BBC Editorial Representative’.</li> <li>There is minor inconsistency in that the “producer” named in the contract is usually the production company, not a member of staff; yet the Commissioning Spec has a space in clause 3 for a named “producer”.</li> </ul> </li> </ul>	<p>Possible oversight in contractual definitions?</p>	<ul style="list-style-type: none"> <li>Definitions for ‘Producer’ and ‘Editorially Responsible Person’ to be added to the General Terms</li> </ul>	<ul style="list-style-type: none"> <li>“Producer”: This is not strictly necessary as it is clear in the contract that “the Producer” party to the contract is the production company whilst the producer named in schedule 2, the Commissioning Specification, is the person who makes the programme.</li> <li>“Editorially responsible Person”: need not be given a separate definition as they are specifically named only in the editorial Specification, in Schedule 2, (and not in the main body of the contract) with a specific responsibility set out in the contract to complete the compliance form.</li> </ul>

<p><b>Who must carry out the various listening requirements:</b></p>	<ul style="list-style-type: none"> <li>Updated A&amp;M Recorded Programmes Compliance Policy</li> </ul>	<ul style="list-style-type: none"> <li><b>The terms given to the individuals required to listen to pre-recorded programming are not consistent in the relevant documents:</b> <ul style="list-style-type: none"> <li>The Updated A&amp;M Recorded Programmes Compliance Policy: sets out that “all pre-recorded programmes (in-house and independent) must be listened to in full by both the producer and a senior editorial figure prior to transmission.”</li> <li>However, the PPA sets out that in the case of independent programming, the ‘editorially responsible person’ within the independent and the ‘BBC editorial representative’ must carry out the listen – it does not use the same terms as in the internal policy document.</li> </ul> </li> </ul>	<p>Confusing nomenclature?</p>	<ul style="list-style-type: none"> <li>Thought should be given to producing consistency as between internal BBC policy documents and contracts, in order to minimise the risk of confusion.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed with the suggestion</li> </ul>
<p><b>Appointing a BBC Editorial Representative within the BBC</b></p>	<ul style="list-style-type: none"> <li>Compliance checklist:</li> </ul>	<ul style="list-style-type: none"> <li><b>This document is unclear:</b> <ul style="list-style-type: none"> <li>While the Compliance checklist: sets out that someone from within the BBC must “identify and name the person who is editorially responsible for the programme in both the indie (Editorial Compliance Representative) and the BBC (“The BBC Editorial Representative”)", it is unclear who is intended to receive this document.</li> <li>Whose job is it to identify and name the person “who is editorially responsible for the programme” both in the indie and the BBC?</li> </ul> </li> </ul>	<p>Unclear documentation?</p>	<ul style="list-style-type: none"> <li>Should be clearer who is intended to receive the document</li> <li>Set out whose job it is to identify and name the relevant individuals.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed that the document should be re-written in light of our suggestions.</li> </ul>
	<ul style="list-style-type: none"> <li>Commissioning editors’ checklist for indies:</li> </ul>	<ul style="list-style-type: none"> <li><b>This document is unclear:</b> <ul style="list-style-type: none"> <li>We understand that the Commissioning Editor may be appointed as the BBC Editorial Representative. However, no reference is made to this role in the Commissioning Editor’s checklist</li> <li>The document does not set out clearly what the duties of the commissioning editor would be if they were appointed as Editorial representatives for the BBC.</li> </ul> </li> </ul>	<p>Unclear documentation?</p>	<ul style="list-style-type: none"> <li>Thought should be given to updating the Commissioning Editor’s checklist, to include details of what their duties may be when they are appointed “BBC editorial representative” for an independent production.</li> </ul>	<ul style="list-style-type: none"> <li>This document is out of date and is no longer being distributed</li> </ul>

<p><b>Appointing an 'Editorially Responsible Person within the Independent'</b></p>	<ul style="list-style-type: none"> <li>• Compliance checklist</li> <li>• Programme Production Agreement – clause 9.12:</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The names given to the individuals appointed within the Independent to deal with editorial matters are not consistent in the relevant documents:</b> <ul style="list-style-type: none"> <li>- The Compliance checklist and Programme Production Agreement give different titles to the same person within the Independent responsible for editorial matters – one refers to an 'editorial compliance representative' while the other refers to an 'editorially responsible person'. Specifically;           <ul style="list-style-type: none"> <li>o The Compliance checklist: Sets out that someone from within the BBC must: 'identify and name the person who is editorially responsible for the programme in both the indie (Editorial Compliance Representative) and the BBC ("The BBC Editorial Representative")</li> <li>o The Programme Production Agreement, in contrast, sets out that "For Radio 4 and other Networks who require an Executive Producer for the Programme...if designated in the Commissioning Specification as the Editorially Responsible Person...shall listen to the Programme in full prior to completion of the BBC Audio and Music Compliance Form.</li> </ul> </li> </ul> </li> </ul>	<p>Confusing nomenclature?</p>	<ul style="list-style-type: none"> <li>• Thought should be given to using the term 'Editorially Responsible Person' in all documentation including internal BBC policy and guidance documentation when referring to the person in the Independent charged with compliance duties.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed with the suggestion and stated that the BBC is moving towards a consistent approach in language</li> </ul>
<p><b>Putting programmes on the Managed Risk Programme List (MRPL)</b></p>	<ul style="list-style-type: none"> <li>• The Compliance checklist:</li> <li>• The Executive Producers/Editors and Editorial Standards Document – June 2009:</li> </ul>	<ul style="list-style-type: none"> <li>• <b>It is unclear who is definitively responsible for updating the MRPL:</b> <ul style="list-style-type: none"> <li>- The Compliance checklist: states that the "BBC's Editorial Representative is responsible for putting programmes on the list [managed risk programme list] and keeping information up to date". However, the Executive Producers/Editors and Editorial Standards Document – June 2009 in contrast sets out that the "EP will make recommendations about adding the programme to A&amp;M's risk list including the pan BBC MRPL."</li> <li>- It is not necessarily the case that the EP will automatically be the BBC Editorial Representative.</li> <li>- If we assume that the Editorial Standards document should refer to the BBC Editorial Representative and not the EP, there could still be a possibility for confusion as the Compliance checklist states that the BBC Editorial Representative is responsible for putting the programmes on the list, while the Editorial Standards document sets out that the BBC Editorial Representative will "make recommendations". Does the Editorial Representative make recommendations about the MRPL or manage and update the list?</li> </ul> </li> </ul>	<p>Documents inconsistent and responsibilities unclear?</p>	<ul style="list-style-type: none"> <li>• Thought should be given to updating the relevant documentation so as to make it absolutely clear who is responsible for updating the various risk lists to avoid confusion.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that while the documentation referenced may be somewhat imprecise, new guidance has been introduced and all of the relevant parties know that the Head of Editorial Standards is responsible for updating and managing the MRPL.</li> </ul>

<p><b>Filling in compliance form at the independent and listening requirements</b></p>	<ul style="list-style-type: none"> <li>• The PPA: General Term 11.4</li> <li>• Radio 2 and 6's Statements of Practice</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The two documents require different individuals to carry out the listening requirements and fill in the compliance form:</b> <ul style="list-style-type: none"> <li>– The PPA requires that the 'editorially responsible person' must "listen to the Programme in full prior to the completion of the BBC Audio and Music Compliance Form" and must "sign the BBC Audio and Music Compliance Form". This 'editorially responsible person' at the independent does not have to be the same individual as the executive producer or producer and may be another person entirely.</li> <li>– However, Radio 2 and 6's Statements of Practice require that the "Producer and the Executive Producer from the Independent" listen to the programme. And that the form "must be signed off by a member of staff approved by the Network, either Producer or Executive Producer, and listed in clause 6 of the production contract".</li> <li>– This inconsistency appears to have been caused by a mismatch between terminology used in the pre-Ross Brand contracts and the revised version: it seems that the terms used in the new contract have not been updated in the Statements of Practice.</li> </ul> </li> </ul>	<p>Documents inconsistent and responsibilities unclear?</p>	<ul style="list-style-type: none"> <li>• Further clarity in the relevant documentation may be required to make it absolutely clear – for example by the use of consistent staff titles – which persons from within the independent and in the BBC are responsible for filling in the various compliance forms and listening to the material</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that there is inconsistency in the wording of the documentation and proposes to redraft the Statements of Practice.</li> </ul>
<p><b>Referral process for editorial advice</b></p>	<ul style="list-style-type: none"> <li>• The Compliance Checklist</li> <li>• General Term 9.11</li> <li>• The Commissioning Editor's Checklist.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The referral process described in the Commissioning Editor's Checklist seems to be inconsistent with those described in the Compliance Checklist and the General Terms.</b> <ul style="list-style-type: none"> <li>– The Compliance checklist sets out that "all referrals to editorial policy and BBC programme advice should be made through the BBC's Editorial Representative". General Term 9.11 reiterates this process setting out that "The Producer shall refer any legal and compliance questions relating to the content of the Programme to the BBC's Editorial Representative as soon as it becomes aware of them".</li> <li>– However, the Commissioning Editor's Checklist sets out that "The Commissioning Editor is the first contact for Indie Programme legal advice".</li> <li>– It is our understanding the Commissioning Editor would only act as the first point of contact for Programme legal Advice if they were also the BBC's Editorial Representative. Should the document be amended to reflect this?</li> </ul> </li> </ul>	<p>Problem of nomenclature?</p>	<ul style="list-style-type: none"> <li>• The referral process for Programme Legal Advice should be made clearer</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed that there is inconsistency in the wording of the documentation and proposes to redraft. However, pointed out that in practice, the Independent is fully aware that it must not contact Programme Legal Advice without first contacting their BBC Editorial Representative.</li> </ul>

<p><b>Online proteus form</b></p>	<ul style="list-style-type: none"> <li>• The Proteus form</li> <li>• Schedule 4 of the Programme Production Agreement – The BBC Audio and Music Compliance Form</li> <li>• The Executive Producers/Editors and Editorial Standards document</li> </ul>	<ul style="list-style-type: none"> <li>• <b>We have identified a number of potential problems relating to the Proteus system:</b> <ul style="list-style-type: none"> <li>- It is unclear who must sign off the Proteus form as the names given to the people required to fill in the form vary in different documents. For example,                             <ul style="list-style-type: none"> <li>o The Proteus form itself has three boxes to be filled in: one by the producer, one by executive producer/editor (or in the case of an independent production by the 'duly authorised representative' and one by the authorised network person.</li> <li>o However, The BBC Audio and Music Compliance Form (for independents) requires that the "Editorially Responsible Person" sign the document – this term is not featured anywhere in the actual Proteus Form.</li> <li>o Meanwhile, The Executive Producers/Editors and Editorial Standard document introduces another term and sets out that "the Executive Producer' must sign off the Proteus form.</li> </ul> </li> <li>- It is our understanding that the BBC Editorial Representative is responsible for inputting the Independent Programme information into the system. Is this the case?</li> <li>- Why is the online Proteus form the same for both in-house and independent productions? Does this lead to confusion?</li> <li>- When will the independents be migrated completely to the Proteus system?</li> </ul> </li> </ul>	<p>Confusing Process or Problem of nomenclature?</p>	<ul style="list-style-type: none"> <li>• The Proteus system would be clearer if tailored to meet the needs of independent producers; the wording of the form should be updated to reflect the current terms used</li> </ul>	<ul style="list-style-type: none"> <li>• Recognised that the Independents should have full access to Proteus and suggested that 3G dongles may be used to give them access in future. As regards updating the form to reflect the wording in the independent's compliance form, the Executive also agreed that the Proteus form should be updated. There are plans for a further raft of changes to the Proteus and the Executive intends that these changes will be made during that process.</li> </ul>
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<p><b>The number of listens required for independently produced pre-recorded programming – and who is responsible</b></p>	<ul style="list-style-type: none"> <li>• Radio 2 and 6's Statements of Practice</li> <li>• Updated A&amp;M Recorded Programmes Compliance Policy</li> <li>• PPA – General Term 5.4.1</li> </ul>	<ul style="list-style-type: none"> <li>• <b>It is unclear how many times an independently produced pre-recorded programme must be listened to before transmission and who is responsible for doing so:</b> <ul style="list-style-type: none"> <li>– The Statements of Practice for Radios 2 and 6 seem to require two listens to pre-recorded programmes within the independent: they set out that “all pre-recorded programmes produced by an independent company and substantial programme components are listened to in advance of transmission by a Senior BBC Editorial Figure in addition to the Producer and the Executive Producer from the independent”. Given that general term 5.4.1 of the PPA require that the independent producer comply with the BBC Guidelines (which includes these Statements of Practice) as part of their contractual obligations, we assume that the independent producer must listen to the programme twice before delivery to the BBC.</li> <li>– However, the Programme Production Agreement seems to require only one listen within the independent – General term 11.4 states that the “Editorially Responsible Person .... shall listen to the Programme in full prior to the completion of the BBC Audio and Music Compliance Form”.</li> <li>– The Updated A&amp;M Recorded Programmes Compliance Policy sets out that “all pre-recorded programmes (in-house and independent) must be listened to in full by both the producer and a senior editorial figure. This would mean one listen at the independent.</li> <li>– How many listens are required within the Independent?</li> </ul> </li> </ul>	<p>Process unclear?</p>	<ul style="list-style-type: none"> <li>• It should be unequivocally clear how many times an independent programme needs to be listened to prior to transmission.</li> </ul>	<ul style="list-style-type: none"> <li>• Accepted that it was unclear how many listens were required. The Head of Editorial Standards recently discovered that Radios 2 and 6 require two listens within the Independent and is currently working to stop this to bring their processes in line with other networks.</li> <li>• Radio 4 also requires a second listen within the independent and the Head of Editorial Standards considers that this second listen should be done in-house rather than by the Independent.</li> </ul>
<p><b>Delivery of compliance form to the BBC “for approval by the Commissioning Editor”</b></p>	<ul style="list-style-type: none"> <li>• PPA</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The PPA does not name the Commissioning Editor although it states that BBC approval will be given by this person.</b> <ul style="list-style-type: none"> <li>– The PPA requires that “The [Independent] Producer shall complete a BBC Audio and Music Compliance Form for each episode of the Programme to be delivered for approval by the BBC’s Commissioning Editor simultaneously with the delivery of the Programme”.</li> <li>– However, the PPA does not define the role of the Commissioning Editor or contain a requirement for this person to be named: it is only where the Commissioning Editor happens to be the BBC Editorial Representative that the former will be named in the contract.</li> <li>– This omission could make it difficult for the Independent to determine whom to deal with and rely on for obtaining the BBC’s approval for broadcast and introduce potential for confusion.</li> </ul> </li> </ul>	<p>Process unclear?</p>	<ul style="list-style-type: none"> <li>• Consideration should be given to naming the Commissioning Editor in the contract.</li> </ul>	<ul style="list-style-type: none"> <li>• The individual and/or address to which the independent must send the completed approval form is set out in the contract, at Schedule 4, so there is no confusion on this point.</li> <li>• Thereafter it is for the BBC to deal with approval and there is no need to name the Commissioning Editor in the contract.</li> </ul>

<p><b>Management of risky programmes</b></p>	<ul style="list-style-type: none"> <li>• PPA: Additional term 6.4</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Is the requirement set out here only for programmes on the MRPL or also for those on the A&amp;M risk list?</b> <ul style="list-style-type: none"> <li>- Additional term 6.4 sets out that with regard to “Compliance issues on managed risk list, the “[Independent] Producer acknowledges that....it will consult with the BBC Editorial Representative on the editorial content of the Programme during the production, notably those issues raised in the Editorial Compliance Considerations set out in the Commissioning Specification, and shall implement any instructions given by the BBC Editorial Representative to ensure the Programme is compliant with the BBC’s Editorial Guidelines.”</li> <li>- We have two questions relating to this additional term: <ul style="list-style-type: none"> <li>o Does this term refer to compliance issues in programmes on both the MRPL and the A&amp;M wide risk list?</li> <li>o Why are independent producers only required to follow the advice and guidance of the BBC Editorial Representative in relation to programmes on the managed risk list? Should the Independent not be required to follow the advice of the BBC in relation to all programming regardless of whether the particular programme is on a risk list or not?</li> </ul> </li> </ul> </li> </ul>	<p>Different requirements for different risk lists?</p>	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Programmes on the MRPL are those carrying a high level of reputational risk to the BBC and as such the Independent warrants that they will implement BBC instructions. For other programmes the general contractual duties of the Independent to consult with the BBC are sufficient.</li> </ul>
<p><b>Listening requirements for in-house programmes</b></p>	<ul style="list-style-type: none"> <li>• Updated A&amp;M Compliance Policy</li> <li>• Proteus form</li> </ul>	<ul style="list-style-type: none"> <li>• <b>It is unclear how many times an in-house pre-recorded programme must be listened to before transmission:</b> <ul style="list-style-type: none"> <li>- The Updated A&amp;M Recorded Programmes Compliance Policy sets out that “all pre-recorded programmes (in-house and independent) must be listened to in full by both the producer and a senior editorial figure.”</li> <li>- This would imply two listens.</li> <li>- However, the Proteus form requires three approvals: from the producer, the executive producer and the authorised network person.</li> <li>- We understand that in practice the third approval in the Proteus form is usually given without a further listen in the case of in-house programming. Is this the case? Should the Proteus form not be altered to reflect the updated compliance policy – i.e. to require two and not three signatures?</li> </ul> </li> </ul>	<p>Process unclear?</p>	<ul style="list-style-type: none"> <li>• It should be unequivocally clear in all relevant documents how many times in-house programmes must be listened to.</li> </ul>	<ul style="list-style-type: none"> <li>• Did not consider that this is necessarily problematic as the third listen is intended to acknowledge that a programme has been scheduled appropriately and does not relate to a third listen. Stated that the process is clear to all the relevant people.</li> </ul>



**3. Apparent discrepancies between the process as described by the BBC documents and the process followed on the ground**

Stage of Compliance Process	Process described in BBC documents	Process currently followed in practice	Management Response
<b>Compliance conversation</b>	<p>The "Executive Producers/Editors and Editorial Standards - June 2009" document sets out that</p> <ul style="list-style-type: none"> <li>- "at the moment of commissioning for all independent projects, we are introducing a requirement for a formal <b>compliance conversation</b> between the BBC Executive producer/Editor and the Independent Executive to identify potential problems.</li> <li>- These <b>conversations must be thoroughly noted</b>, the notes kept and the issues summarised in the programme production agreement".</li> </ul>	<ul style="list-style-type: none"> <li>• Our interviews suggest that independent producers and in-house producers are not familiar with the concept of a formal 'compliance conversation' as set out above.</li> <li>• With regards documenting the conversation, while we have seen email communication between producers and editors discussing compliance issues, the notes of compliance conversations do not appear to be recorded formally.</li> </ul>	<ul style="list-style-type: none"> <li>• Accepted that a formal compliance conversation may not take place as described in the commitment. In Radio, programmes are frequently long running and programme start up meetings do not need to happen frequently. However, if significant editorial issues arise these will be discussed formally and will often be detailed in emails. In effect, the compliance checklist is intended to form the basis of the compliance conversation and it generally does so.</li> </ul>

**Annex B: List of interviewees****Annex B: List of interviewees**

<b>Name</b>	<b>Role</b>
Abigail Appleton	Head of Speech Programming and Presentation, Radio 3
Jane Berthoud	Head, Radio Comedy
John Boundy	Head of Specialist Factual
Ben Cooper	Deputy Controller, Radio 1, 1xtra, Asian Network, BBC Music, BBC Switch
Fiona Couper	Editor Arts Weeklies
Phil Critchlow	Deputy Chair, Radio Independent's Group
Graham Ellis	Controller A&M Production
Caroline Elliott	Head of Strategic Operations, A&M (Divisional Head of Training)
Mark Damazer	Controller of Radio 4, Radio 7
Tim Davie	Director A&M
Graham Dixon	Managing Editor, Radio 3
Jane Ellison	Commissioning Editor, General Factual
Mark Friend	Controller A&M Interactive
John Goudie	Editor Front Row, R4
Joe Graham	Compliance Editor R2,6 music
Mike Hally	Chair, Radio Independent's Group
Peter Hoare	Managing Director, Pier productions
Jeremy Howe	Commissioning, Editor Drama
Hussain Hussani	Head of Programmes, Asian Network
Mark Johnston	Internal Audit
David Jordan	Director, BBC Editorial Policy and Standards
Rob Ketteridge	Editor Docs & Features
Steve Mitchell	Head of News, Radio
John Moran	Head of Legal & Business Affairs, A&M
Jez Nelson	Creative Director, Somethin' Else – an Independent Production Company
Nicholas Newton	Secretary, Radio Independent's Group
Mark Osborn	Internal Audit
Huw Owen	Senior Producer, Somethin' Else - an Independent Production Company
Andy Parfitt	Controller, Radio 1, 1xtra, Asian Network, BBC Music, BBC Switch
Alan Phillips	Senior Business Manager A&M
Bob Shennan	Controller of Radio 2 and 6 music
Karen Shipway	Freelance legal & business affairs consultant for Pier Productions
Paul Smith	Head of Editorial Standards, A&M
Tarrant Steele	Managing Editor R1/1xtra
Gordon Turnbull	Head of Radio Sport
Adrian Van Klaveren	Controller R5Live
Zillah Watson	Compliance Editor Radio 4
Roger Wright	Controller R3

**Annex C: Glossary**

### BBC Organisations and Divisions

- **Audio and Music:** The Audio & Music (A&M) division is responsible for all the BBC's national radio networks and for the production of most of the classical and popular music across radio and television
- **News (Journalism):** The Journalism Group comprises the BBC News, BBC Nations & Regions, BBC Global News and BBC Sport divisions. It is responsible for all the BBC's news, current affairs and sport output
- **Vision:** The Vision division is responsible for commissioning, producing, scheduling and broadcasting the content of all of the BBC's television channels.
- **DDG:** The Deputy Director General is responsible for Editorial Policy and Standards as chair of the Editorial Standards Board and chair of the Complaints Management Board.
- **BDG:** BBC Direction Group (BDG) is responsible for managing pan-BBC issues delegated to it from the Executive Board and ensuring that the organisation meets its pan-BBC objectives. BDG meetings take place three times a month

### Independent production

- **Freelance producers:** In the BBC a freelancer is typically hired for specific jobs or projects on an ad hoc basis. The producer sells his/her services to other organisations in addition to the BBC and invoices the BBC directly. However, the BBC is wholly responsible for the editorial compliance of programmes produced by freelance producers.
- **Independent producers:** independent producers are companies, partnerships or individuals, financially independent of the BBC. They are contracted to deliver to the BBC a completed programme, or a live-programming stream, that is fully compliant with all the relevant policies
- **Talent-owned independent:** In talent-owned independents, the 'talent' – typically the show's presenter- owns the production company responsible for creating the programme.

### Governance

- **BBC Trust:** The Trust is the body responsible for setting the overall strategic direction of the BBC, including its priorities, and in exercising a general oversight of the work of the Executive Board. The Trust performs these roles in the public interest, particularly the interest of licence fee payers.

- **BBC Governors:** The BBC Governors were originally responsible for the strategic direction of the BBC and represented the interests of the public. This group was replaced by the BBC Trust on 1 January 2007.
- **BBC Executive:** The Executive is responsible for the BBC's operational management and for the delivery of BBC services according to the plans that have been agreed with the BBC Trust
- **Ofcom:** Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.
- **Editorial Standards Committee:** The ESC is a committee established by the Trust to assist it in securing editorial standards. It provides independent oversight of the BBC's strategic approach to the handling of editorial complaints, monitoring the effectiveness of the BBC's processes and ensuring that best practice is followed. It will also determine editorial complaints on appeal and appeals about the BBC Executive's handling of complaints under the BBC's editorial complaints process.

#### BBC process

- **Referring up:** This is a process by which contentious or difficult editorial questions are passed on to more senior figures to answer. If an editorial figure is unsure he/she will refer to the matter to their superior to seek additional guidance.
- **Managed Risk Programme List:** This is an early warning list to highlight programmes with editorial risks (such as legal, commercial or reputational risks). If the BBC's Executive Producer puts a programme on the list that generally means that extra care is being taken when handling that programme. The independent will always be informed if a project is on the MRPL and should inform the BBC EP if, in their view, a change in circumstances necessitates a programme's inclusion.
- **Exemption list:** Programmes which appear on this list do not pose any compliance concerns and therefore do not require the second listen. The Head of Compliance manages this 'Exemption List' on a regular basis and adds programmes as appropriate. For example, pre-recorded concerts which have been listened to in full during the live broadcast by the senior editorial figure are frequently added to the exemption list as a second listen is deemed unnecessary.
- **General Terms:** The general terms set out the core terms of engagement between the BBC and the independent production company from whom it is commissioning programmes. These are captured in a formal handbook and

they are frequently updated through the publication of 'additional contract terms'.

- **Additional Contract Terms:** These terms have been introduced to update and amend the general terms.
- **Programme Production Agreement:** The PPA sets out the detailed contractual arrangements that exist between the BBC and the relevant production company from whom it is commissioning programmes.
- **Editorially Responsible Person:** This term is given to the person within an independent production company who is responsible for ensuring that the programme delivered to the BBC is compliant with the BBC's guidelines. This person must be independent of the talent, listen to the final edit of the commissioned programme and fill in a compliance form indicating that the programme is fit for purpose.
- **BBC Editorial Representative:** This is the senior editorial figure appointed within the BBC to deal with an assigned independent production. This individual is responsible for: providing editorial advice to the Independent during production; reviewing the final edit of the independent programme; and completing the online compliance Proteus form on the independent's behalf prior to transmission.
- **Commissioning Editor:** This individual is responsible for commissioning all programming that is broadcast by the BBC Networks – both internally and from independents. In many cases, though not every case, they are also appointed as the BBC's Editorial Representative to deal with editorial issues in independent production.
- **Proteus:** This is the online system used by the BBC to keep track of the commissioning, production and compliance processes of all audio and music output produced within the BBC and independently.
- **Recorded Programmes Compliance Policy:** This document is distributed within the BBC and to independents setting out the compliance requirements for recorded audio programming.
- **Statements of Practice:** These are the statements of guidance intended for live programme-making issued by the networks.
- **Podcast:** A series of digital media files (either audio or video) that are released episodically and downloaded through web syndication.
- **Visualisation:** The term visualisation refers to the addition of a large amount of visual content to the standard audio offer. The availability of these visualised elements depends on the listener/viewer having access to a desktop or PC. A standard radio does not provide access to these additional features. The visual content available ranges from relatively low risk text information and song information to more high risk content, such as webcam streaming of presenters live on-air.

## Training

- **BBC Training and Development Academy:** the BBC in-house organisation charged with bringing together all the BBC's activities into 3 colleges:
  - **College of Production:** focusing on core editorial, creativity and production skills, together with production management, health and safety and multiplatform training and development
  - **College of Journalism:** bringing together all current initiatives for the College of Journalism, the World Service and Nations & Regions to provide a single and integrated home for all journalism training and development. It will continue to deliver editorial standards, legal training and core journalist craft skills as well as leading on international training.
  - **College of Leadership and Management:** building leadership skills across the corporation; it will also take the lead in the development of business skills and professional services and will be a critical part in the BBC's approach to talent management and succession planning

**Annex D: Terms of Reference**

**BBC TRUST REVIEW OF COMPLIANCE PROCEDURES IN AUDIO & MUSIC  
TERMS OF REFERENCE**

**Introduction**

At its meeting on 30 October 2008, the Editorial Standards Committee of the BBC Trust concluded that the events surrounding the editions of the Russell Brand show broadcast on 18 and 25 October 2008 had demonstrated an inadequacy in the editorial control and compliance procedures in the non-news areas of the BBC's Audio and Music department, and called for the Director-General to present a plan as to how they would be strengthened.

The Editorial Standards Committee also committed itself to carrying out an independent validation of the effectiveness of the measures taken, once they had been implemented.

**Scope of the review**

The Editorial Standards Committee investigation into the Russell Brand show identified the following failures within the Audio and Music department:

- a failure to follow the compliance procedures in place
- a failure of editorial judgement in relation to both privacy and offence
- a failure to exercise adequate editorial control over material supplied by an independent producer

In December 2008, the Executive reported to the Trust that it had introduced the following measures to address those shortcomings:

- a new 'High Risk Programmes Register' had been introduced
- new guidance had been issued to clarify the mandatory requirements for compliance for pre-recorded programmes
- the process was underway to recruit a full-time Head of Editorial Standards for A&M, as well as a new Controller of Radio 2 and 6 Music, and Compliance Editor for Radio 2 and 6 Music
- Audio and Music department had implemented a number of actions to help manage any risks posed when a programme is made by an independent production company owned by the presenter or performer who features in the programme.

In May 2009, the Executive made a further report to the Trust that, with reference to bullet point three, above:

- Paul Smith had been appointed as the Head of Editorial Standards for A&M; Bob Shennan had been appointed as Controller of Radio 2 and 6 Music; and Joe Graham had been appointed as Compliance Editor for Radio 2 and 6 Music.

In carrying out the Trust's review of the effectiveness of these measures, the review team will be asked to address three specific issues:

- the degree to which the measures adopted by the BBC address the shortcomings exposed by the events leading up to the broadcasts, as well as the broadcasts themselves
- the effectiveness of the implementation of these measures, including an assessment of the adequacy of any training or other form of promulgation, aimed both at the in-house and the independent production community with a focus on the understanding of risk and clarity as to responsibility at all stages of the process
- the adequacy of the BBC's plans to monitor their implementation, to ensure that any necessary modifications are adopted

#### **Approach**

As well as studying the internal reports and findings by the BBC Trust and by Ofcom related to the original incidents, the review team will also take as their starting point any compliance procedures put in place by Audio and Music department since October 2008. They will also conduct interviews with key members of staff in the Audio and Music.

The report will be published on the Trust's web site.

#### **Review team**

The review will be carried out by Tim Suter, former Partner for Content and Standards at Ofcom, and Tony Stoller, former Chief Executive of the Radio Authority. The independent validation work will be overseen by the Trust's Editorial Standards Committee.

#### **Timetable**

<b>September 2009</b>	Review begins and terms of reference are published
<b>Autumn 2009</b>	Review team report to the Trust
<b>Winter 2009 / 2010</b>	Final report published by the Trust