

# **BBC protocol E1 – Trust oversight of the BBC**

May 2010

# Trust oversight of the BBC

## What is a protocol?

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

## The Charter and Agreement

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

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

## What this protocol is about

This protocol explains how the Trust oversees the way in which the Executive Board manages the BBC's day-to-day operational affairs. It is concerned with oversight of business processes and compliance with regulatory and legal requirements (rather than the performance of BBC services).

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# Trust oversight of the BBC

## Approach and principles

- 1.1 The BBC Trust is responsible assessing the performance of the BBC Executive Board in delivering the BBC's services and activities, and holding the Executive Board to account for its performance.<sup>1</sup>
- 1.2 The Executive Board is responsible for the operational day-to-day management of the BBC, for the conduct of the BBC's operational financial affairs in a manner best designed to ensure value for money and for ensuring compliance with all legal and regulatory requirements placed upon the BBC, including those requirements placed upon it by the BBC Trust.<sup>2</sup>
- 1.3 The BBC Trust will require the Executive Board to report periodically on how it is managing particular aspects of the BBC's operations, including outturn against specific targets and other regulatory requirements set by the legal framework – including the BBC Charter and Agreement - the BBC Trust and other applicable regulatory bodies.
- 1.4 The BBC Trust's oversight of the Executive Board will be at a level appropriate to the Trust's strategic remit. The BBC Trust may delegate the oversight activities described in this protocol to a relevant Trust committee as appropriate.
- 1.5 Where the BBC Trust considers that the actions being taken by the Executive to manage the BBC are not sufficient in any area it will consider requesting more specific actions from the Executive Board to remedy the situation.
- 1.6 The BBC Trust has discretion to procure an independent review of any aspect of the BBC's performance should it require additional assurance over the performance of the BBC against its targets.<sup>3</sup>
- 1.7 In discharging any of its oversight duties mentioned in this protocol, the BBC Trust may seek additional information that it sees fit from any employee of the BBC. All employees shall co-operate with any reasonable and lawful request made by the BBC Trust in this regard and the Executive Board shall, insofar as necessary, require them to do so.
- 1.8 This protocol covers the BBC as a whole, including the commercial services, BBC World Service and BBC Monitoring. It is focused on the business processes underpinning the BBC's operations and regulatory compliance rather than the performance of individual BBC services. (How the BBC Trust monitors performance of the UK Public Services is covered in Protocol C1 UK Public Services).

### Scope

- 1.9 This protocol is divided into the following sections:
  - (a) Part A, risk management<sup>4</sup>

<sup>1</sup> BBC Charter Article 24(1)(c)

<sup>2</sup> BBC Charter Article 38 (1)(c)

<sup>3</sup> BBC Charter Article 24(1)(c)

- (b) Part B, financial monitoring<sup>5</sup>
- (c) Part C, value for money investigations<sup>6</sup>
- (d) Part D, fair trading arrangements<sup>7</sup>
- (e) Part E, licence fee collection arrangements<sup>8</sup>
- (f) Part F, digital switchover process<sup>9</sup>
- (g) Part G, legal compliance<sup>10</sup>
- (h) Part H, quotas and targets
- (i) Part I, arrangements for the training of BBC staff<sup>11</sup>
- (j) Part J, equality and diversity<sup>12</sup>

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<sup>4</sup> BBC Charter Article 24(2)(j)

<sup>5</sup> BBC Charter Article 24(1)(a), 24(2)(a) and 24(2)(e)

<sup>6</sup> BBC Charter Article 24(2)(i)

<sup>7</sup> BBC Charter Article 24(2)(k)

<sup>8</sup> BBC Charter Article 24(2)(m)

<sup>9</sup> That is, the progressive replacement of the analogue broadcasting of television services within the UK with digital broadcasting of those services.

<sup>10</sup> BBC Charter Article 24(2)(f)

<sup>11</sup> BBC Agreement Clause 84

<sup>12</sup> BBC Agreement Clause 83

## A RISK MANAGEMENT

### Role and duties of the BBC Trust

- A1.1 The Charter gives the BBC Trust the specific duty to ensuring that the Executive Board addresses the key operating risks of the BBC.<sup>13</sup>

### Role and duties of the BBC Executive Board

- A2.1 The Executive Board is responsible for the BBC's operational affairs which will include addressing and managing the BBC's key operating risks.<sup>14</sup>
- A2.2 Under the Charter, the Executive Board is required to have an Audit Committee, which shall have functions commensurate with the highest standard of corporate governance.<sup>15</sup>
- A2.3 Accordingly, the Executive Board, with additional review and oversight from its Audit Committee, will operate, and keep under review, the detailed BBC risk management processes and internal controls.

## Procedures

### BBC Trust direction

- A3.1 The BBC Trust will require the Executive Board to provide reports every six months on the key operating risks facing the BBC and the action the Executive Board is taking to mitigate those risks to an acceptable level.
- A3.2 Additionally the BBC Trust requires the Executive Board to notify the Trust of any significant increases in key operating risks faced by the BBC on an ad hoc and timely basis.
- A3.3 The BBC Trust will require annual written assurances from the Executive Board concerning the operation of the risk management process and internal control systems within the BBC prior to the completion of each year's Annual Report and Accounts.
- A3.4 The BBC Trust will require notification from the Executive Board in advance of any actions to appoint, replace, reassign or dismiss the Director of Risk and Assurance (or equivalent post covering the senior lead on internal audit and investigations work).
- A3.5 The BBC Trust will require that the Executive Board Audit Committee provide it with all minutes from its meetings and that reports from internal and external auditors, including workplans are available to the Trust on request.
- A3.6 The BBC Trust expects that were the Chair of the Audit Committee or the Director of Risk and Assurance to have serious concerns that were not being addressed by

<sup>13</sup> Charter Article 24(2)(j)

<sup>14</sup> Charter Article 38(1)(c)

<sup>15</sup> Charter Article 35(3)

the Executive Board then they would report these directly to the Chair of the BBC Trust's relevant committee.

### **Executive reports**

- A3.7 It is up to the Executive Board, through its Audit Committee, to determine the appropriate content of the biannual risk management reports subject to the following minimum content:
- (a) key operating risks graded according to threat to BBC
  - (b) direction of movement in severity of key risks
  - (c) mitigating actions in place / being taken
  - (d) any specific issues notified in advance by the BBC Trust to the Executive Board.
- A3.8 When the Executive Board identifies a significant increase in the severity of risks facing the BBC, it will ensure it notifies the BBC Trust of these promptly in an ad hoc report. This report must set out the issue and explain the actions the Executive Board is taking to mitigate the risk to an acceptable level. Depending on circumstances, such a report may be written or oral.
- A3.9 The Executive Board will provide to the BBC Trust annual, formal, written assurances on the risk management processes and internal controls operating in the BBC and also on the BBC's compliance with corporate governance standards. These statements will be informed by the work of internal and external auditors and approved by the Audit Committee prior to submission to the BBC Trust.
- A3.10 The Audit Committee will provide to the BBC Trust all minutes from its meetings. It will also provide any other reports from the internal and external auditors on request, subject to a reasonable allowance of time for the Executive Board to respond to any specific issues raised in those reports.

### **BBC Trust review**

- A3.11 In addition to reviewing the periodic reports referred to above, the BBC Trust will meet with the following people at least annually without the Executive Board present:
- (a) Chair of Audit Committee
  - (b) Director Risk and Assurance
  - (c) external auditors.
- A3.12 If the BBC Trust has any concerns arising from its actions above, it may request further explanations or actions from the Executive Board or Audit Committee.

## **Outputs and timings**

- A4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part A 'risk management' of this protocol.
- (a) The Executive Board will include a statement on corporate governance compliance, including the effectiveness of its risk management and internal controls systems within its Annual Report and Accounts.



- (b) Every six months, the Executive Board will report to the BBC Trust on the key risks facing the Trust.
- (c) On an ad hoc and timely basis, the Executive Board will notify the BBC Trust of significant increased in risks faced by the BBC
- (d) The Executive Board will notify the BBC Trust in advance of any actions to appoint, replace, reassign or dismiss the Director of Risk and Assurance (or equivalent post covering the senior lead on internal audit and investigations work)
- (e) The Executive Board will provide the BBC Trust with Executive Board Audit Committee minutes, and upon request, reports from internal and external auditors, including workplans.

## B FINANCIAL MONITORING

### Role and duties of the BBC Trust

- B1.1 The Charter places a general duty on the BBC Trust to exercise rigorous stewardship of public money, in the exercise of the Trust's functions.<sup>16</sup>
- B1.2 More specifically, the Charter requires the BBC Trust to keep under review the BBC's financial needs to ensure that the BBC Executive Board does not spend more than it needs to in discharging its duties.<sup>17</sup>
- B1.3 The Charter also requires the BBC Trust to approve individual financial proposals where these have significant implications for the fulfilment of the purpose remits and strategies previously approved by the Trust or for the overall financial position of the BBC.<sup>18</sup>
- B1.4 The BBC Trust is also required to define suitable performance criteria and measures against which to judge the BBC's performance in delivering the public purposes. Some of these will be financial measures.

### Role and duties of the BBC Executive Board

- B2.1 The Charter makes the Executive Board responsible for the conduct of the BBC's operational affairs (except those relating directly to the BBC Trust and the Trust Unit<sup>19</sup>) in a manner designed to ensure value for money.<sup>20</sup>
- B2.2 The Charter gives the Executive Board the responsibility for making proposals to the BBC Trust for any specific financial decisions which it is for the Trust to approve.<sup>21</sup>
- B2.3 The Executive Board is also required by the Charter to account to the BBC Trust for its own performance and the performance of the BBC and its subsidiaries.

## Procedures

### BBC Trust direction

- B3.1 The BBC Trust will approve a referral framework designed to ensure that relevant financial matters arising during the year are referred to the Trust for approval. This framework is set out in section B3.13 below. The framework recognises that the level of proposed financial expenditure may not always be the deciding factor in whether a referral is required. Expenditure on any one investment may be large but non-contentious and therefore remain under the authority of the Executive Board. Equally, relatively small sums could be of great importance and hence require BBC Trust approval.

<sup>16</sup> BBC Charter Article 23(d)

<sup>17</sup> BBC Charter Article 22(a)

<sup>18</sup> BBC Charter Article 24(2)(e)

<sup>19</sup> The Trust Unit provides independent advice and support to the BBC Trust.

<sup>20</sup> BBC Charter Article 38(1)(h)

<sup>21</sup> BBC Charter Article 38(1)(i)

- B3.2 The BBC Trust will clearly define all financial targets in advance of key budgetary planning decisions for any particular year. Such targets will reflect the strategic priorities of the BBC Trust and include:
- (a) financial parameters imposed on the BBC by the relevant Secretary of State (for example, under the licence fee settlement)
  - (b) financial targets in respect of individual services (for example, budgets set within service licences)
  - (c) high-level financial targets which the BBC Trust perceives as appropriate to the circumstances of the BBC in any particular year.
- B3.3 The BBC Trust will agree with the Executive Board a reporting framework which sets out the measures to be reported to the BBC Trust and a timetable for that reporting.
- B3.4 The BBC Trust will consider whether there is a need for any additional independent review over the achievement of targets.

#### **Executive financial referrals to the BBC Trust**

- B3.5 It is the responsibility of the Executive Board in the first instance to decide on whether or not a financial proposal should be referred to the BBC Trust.
- B3.6 When the Executive Board decides that a financial proposal should be referred to the BBC Trust, the matter should have been first considered and approved by the Executive Board.
- B3.7 Where there is a difference of opinion between the BBC Trust and the Executive Board on whether a matter should be referred to the Trust for approval, the Trust's decision shall be final.<sup>22</sup>
- B3.8 Where a referral to the Trust is necessary, the Executive Board will liaise with the Trust Unit to agree a process and timetable which is appropriate to the circumstances of each case. As a guide, the normal process will be for the Executive Board to submit a paper to the Trust via the Finance and Compliance Committee which explains the proposals, including the basis of referral to the Trust. The Executive Board will be responsible for determining the contents of this paper subject to the following minimum information:
- Objectives of the investment, including how these align with the BBC's Public Purposes
  - Assessment of the full-life costs and delivery timetable of the project
  - Assessment of the qualitative and quantitative benefits, how these align to the investment objectives and when they will be delivered
  - A quantified assessment of risk (so any uncertainty in the scope of the project can be evaluated)
  - a description of the proposed governance structure including roles, responsibilities and reporting lines
  - A summary of the options considered by the Executive Board (including details and cost of a "cease project" option)

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<sup>22</sup> BBC Charter Article 9(2)

- Any other specific information requested by the Trust regarding that proposal.
- B3.9 Where a matter is required to be referred to the BBC Trust, the Trust's approval must be received before any contractual or financial commitments are made.
- B3.10 The Executive Board must submit revised financial proposals to the BBC Trust for approval where:
- (a) circumstances change significantly subsequent to the approval of a budget for a particular period of activity; or
  - (b) the Executive Board wishes to vary approved budgets outside the limits set within the referral framework.

#### Referral framework

- B3.11 The conditions for referral to the BBC Trust are designed such that financial proposals must be referred to the Trust for approval where:
- (a) the proposals are of a scale and nature that might have significant implications for the fulfilment of the purpose remits and strategies which include high-level budgetary allocations or for the overall financial position of the BBC; or
  - (b) the proposals are outside the normal course of business of the BBC; or
  - (c) the proposals are novel and contentious.
- B3.12 The referral criteria for investment proposals concerning the BBC's commercial services are set out in protocol C4.
- B3.13 The referral criteria for investment proposals concerning the BBC's Public Service activities are set out in the table below.

**Table 1: Financial referral framework**

Asset<sup>23</sup> additions or disposals where **at least one** of the relevant financial measures<sup>24</sup> exceeds **£50 million**;

Corporate acquisitions or disposals (including joint ventures and share holdings) which either—

- will result in entry by the BBC to a completely new market or area of activity, **OR**
- where at least one of the relevant financial measures exceeds **£50 million**;

Any other major new financial commitments which individually exceed **£50 million** but excluding those which—

- are renewals or retenders of existing service contracts where the financial commitment does not exceed **£150 million**; **OR**
- relate to content or sports rights;

Major changes in expenditure between Public Services such that a service would be taken outside its permitted budget tolerance and/or any monetary cap (as stipulated in the

<sup>23</sup> Assets refers to both tangible and intangible assets

<sup>24</sup> Relevant financial measures refers to: net book value of addition / disposal; market value of addition /disposal; sales proceeds /consideration paid

relevant service licence);

Financial commitments that are novel and contentious such that they may lead to—

- serious risk of damage to the BBC's brand or reputation; **OR**
- public perception that BBC's independence has been compromised; **OR**
- serious risk of disruption to any services;

In respect of financial commitments concerning talent, programme rights or acquisitions, the interpretation of "novel and contentious" should be considered in respect of commercial rather than editorial considerations.

Significant changes to the scale of operation or funding of any initiative previously approved by the BBC Trust where such change—

- exceeds 10% of the approved budget or in the case of a service licence the limits imposed in that licence, **OR**
- is in breach of any conditions imposed by the BBC Trust when giving its approval which may include the specification of a lower financial limit for excess items.

#### **Executive financial reporting**

- B3.14 The Executive Board must provide the Trust Unit with the monthly finance report that is prepared for, and submitted to, the Executive Board each month.
- B3.15 The Trust Unit will set out an appropriate timetable for the submission of these reports to the BBC Trust.
- B3.16 Such finance reports should include appropriate information to enable the BBC Trust and the Executive Board to understand:
- (a) the financial performance of the BBC in the year to date
  - (b) the expected impact of this on:
    - the likely outturn for the year; and
    - any key targets and performance indicators.
- B3.17 The finance reports may contain anything relevant to their subject matter, and the overall contents and format will reflect the Executive Board's judgement on what is relevant to giving an informed view of the financial position and performance of the BBC. However, as a guide, the monthly finance report will include information on:
- (a) performance against key targets and performance indicators
  - (b) opportunities and risks
  - (c) public service broadcasting group income and expenditure statement
  - (d) group cash position
  - (e) group balance sheet
  - (f) analysis of group expenditure
  - (g) group capital expenditure
  - (h) group headcount

- (i) programme activity
- (j) overview of strategic projects
- (k) commercial business performance (key indicators; revenue; PBIT<sup>25</sup> by business; borrowings)
- (l) changes in accounting policy or treatment and the financial implications
- (m) overview of World Service performance.

#### **BBC Trust review**

**B3.18** Quarterly, the BBC Trust will review the BBC's financial performance with the Chief Financial Officer and the Director-General, and this review will include at a minimum:

- (a) an examination of the BBC's financial performance against key targets/criteria set in the high-level financial strategy and annual budgetary allocations, alongside purpose remits and service licences
- (b) the monitoring of efficiency targets, key investments and key projects
- (c) consideration of forecasts
- (d) consideration of the performance of commercial services.

**B3.19** At least once a year, the BBC Trust will meet with a representative from the BBC Pension Scheme to receive an update on the financial health of the Pension Scheme.

**B3.20** When reviewing investment cases referred to it by the Executive Board, the Trust will consider these against four main criteria:

- affordability
- value for money
- the extent to which they further the specific strategy to which they relate
- the extent to which they further the BBC's Public Purposes

## **Outputs and timings**

**B4.1** This section sets out a summary of the key outputs, and where known, timings as set out in part B 'financial monitoring' of this protocol.

- (a) The BBC Trust will approve a referral framework for relevant financial matters.
- (b) The BBC Trust will define all financial targets in advance of key budgetary planning decisions for any particular year. This will include setting a reporting framework which sets out measures to be reported to the BBC Trust and a timetable for that reporting.
- (c) If required, the BBC Trust may seek additional independent review regarding the achievement of targets.

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<sup>25</sup> PBIT means profit before interest and tax

- (d) The Executive Board must provide the BBC Trust with the monthly finance report that is prepared for and submitted to the Executive Board each month.
- (e) Quarterly, the BBC Trust will review the BBC's financial performance with the BBC Executive's Chief Financial Officer.
- (f) At least once a year, the BBC Trust will meet with a representative from the BBC Pension Scheme to receive an update on the financial health of the Pension Scheme.

## C VALUE FOR MONEY (VFM) INVESTIGATIONS

### Role and duties of the BBC Trust

- C1.1 The Charter gives the BBC Trust the specific function of commissioning value for money (VFM) investigations into specific areas of BBC activity.<sup>26</sup>
- C1.2 The Agreement requires the BBC Trust to examine the value for money (VFM) achieved by the BBC in how it uses the licence fee revenue and in doing so, to consult with the National Audit Office (NAO) on a VFM audit programme, including consideration of which studies within that programme are best suited to the NAO.<sup>27</sup>

### Role and duties of the BBC Executive Board

- C2.1 Members of the Executive Board (including the Director-General and the Chief Financial Officer) may be required to participate in discussions with the BBC Trust and NAO to scope areas for the Trust's VFM audit programme.
- C2.2 The Executive Board must co-operate with the NAO or any other organisation that has been instructed to undertake a VFM review.
- C2.3 The Executive Board may be required by the BBC Trust to respond to any aspect or conclusion of a report following a VFM investigation.

## Procedures

### BBC Trust planning of the VFM audit programme.

- C3.1 The Trust Unit will conduct an initial scoping of the VFM audit programme for the next and successive calendar years.
- C3.2 As part of this, the BBC Trust will:
- (a) discuss regularly with the Comptroller and Auditor General (C&AG) the possible scope of its VFM audit programme and which individual reviews may be suited to the NAO
  - (b) provide the NAO with the information needed to conduct such a discussion, including all relevant papers on risk and audit, including as a minimum:
    - Risk registers and reports
    - Audit committee papers and minutes
    - Internal audit papers, reports and forward programme
    - Minutes of Executive Board meetings
- C3.3 To assist the planning process the BBC Trust will also arrange a structured series of meetings between the NAO and the BBC's senior management and its financial auditors, as well as with the Trust itself.

<sup>26</sup> BBC Charter Article 24 (2)(i)

<sup>27</sup> BBC Agreement Clause 79



- C3.4 The outcome from the initial planning will be a prospective long list of studies out of which a short list of possible areas for review in the immediately following calendar year is identified, noting those most suited to be undertaken by the NAO.

**BBC Trust decision on the VFM audit programme**

- C3.5 The BBC Trust will decide upon a VFM audit programme for the calendar year immediately following (areas for review, and allocation between NAO and other bodies); and will provisionally plan the VFM audit programme for successive years.
- C3.6 The C&AG or his/her representative will be invited to attend the relevant BBC Trust Committee meeting at which the programme is discussed and agreed.
- C3.7 In the event that significant concerns arise, it is open to the NAO to propose to the BBC Trust that the Trust should modify the proposed VFM audit programme for the year in question.

**Arrangements for individual reviews**

- C3.8 The BBC Trust will require the Executive Board to nominate an executive sponsor for each individual VFM review commissioned by the Trust.
- C3.9 Having made its decision on a VFM audit programme, the BBC Trust must enter into suitable arrangements with the NAO and other organisations to carry out individual reviews in accordance with the programme.
- C3.10 Any arrangements with the NAO must be on terms which:
- (a) require the factual content of any report to be agreed by the Executive Board's nominated sponsor before submission of the report to the BBC Trust, but
  - (b) allow the NAO to retain full discretion over the report's conclusions and recommendations.
- C3.11 Any arrangements with the NAO or any other organisation must require the NAO or that other organisation, on completion of a review, to report exclusively to the BBC Trust on that review.
- C3.12 The organisation that is to carry out a particular VFM review is to work up detailed terms of reference for that review, in co-operation with the Trust Unit. Such terms of reference will be approved by the BBC Trust before the review commences.

**Action following receipt of reports**

- C3.13 The BBC Trust will require the Executive Board's nominated sponsor to present a formal written response to the Trust concerning the findings and recommendations arising from the review.
- C3.14 The BBC Trust will also require the Executive Board's nominated sponsor to provide an action plan which details the steps the Executive Board intends to take to address any recommendations and the timescale for those actions.
- C3.15 The BBC Trust must consider the findings from each VFM review and decide what action the Trust must take in the light of each such report and the Executive Board's response thereon.
- C3.16 The BBC Trust will prepare its own written response for inclusion within the review report prior to its publication.

**Sending reports and responses to the Secretary of State.**

- C3.17 Following the conclusion of a review, the BBC Trust will send any report submitted to it (whether by the NAO or by any other organisation) together with any written response it considers appropriate, to the relevant Secretary of State.<sup>28</sup>
- C3.18 It is the responsibility of the relevant Secretary of State to lay that report, together with the BBC Trust's response (if any), before Parliament.

**Monitoring of action following reports**

- C3.19 The BBC Trust will require the Executive Board to report to it at least annually on progress made in addressing the recommendations arising from the BBC Trust's programme of VFM reviews.

**Wider BBC/NAO contact**

- C3.20 Alongside the arrangements referred to above, in order to enhance the relationship between the BBC and the NAO, the BBC Trust will arrange for:
- (a) periodic discussions between a nominated Trustee and the C&AG
  - (b) quarterly discussions between NAO and Trust Unit to review the progress of studies and other issues.

**Outputs and timings**

- C4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part C 'value for money investigations' of this protocol.
- (a) The BBC Trust will commission VFM investigations.
  - (b) The BBC Trust will publish its planned programme of VFM audit reviews for the coming year within its annual workplan.
  - (c) The Executive Board will present a formal written response and an action plan in respect of each VFM review
  - (d) The BBC Trust will prepare a written response to each VFM review.
  - (e) The BBC Trust will provide any completed report submitted to it and, if appropriate, its written response, to the relevant Secretary of State.
  - (f) The relevant Secretary of State is responsible to lay that report and the BBC Trust's response, if any, before Parliament.
- (a) Every VFM review will result in a report which is submitted to, and considered by, the BBC Trust. After receiving any such report, the BBC Trust will send each report, along with any response, to the relevant Secretary of State who will lay the report, including any response, before Parliament.

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<sup>28</sup> BBC Agreement Clause 79(4)

## D FAIR TRADING ARRANGEMENTS

### Role and duties of the BBC Trust

- D1.1 The BBC Trust must have regard to the competitive impact of the BBC's activities on the wider market in the exercise of all its functions<sup>29</sup> and it must adopt and publish a statement of its policy on that competitive impact.<sup>30</sup>
- D1.2 The BBC Trust has the specific function of adopting a statement of policy on fair trading, and holding the Executive Board to account for compliance with it.<sup>31</sup>
- D1.3 The BBC Trust is required to adopt and publish codes dealing with those aspects of the operation of the UK's Public Services that in the Trust's view could raise significant issues regarding the competitive impact of the BBC's activities.<sup>32</sup>
- D1.4 Having published them, the BBC Trust must keep these statements and codes under review.<sup>33</sup>
- D1.5 The BBC Trust must monitor the Executive Board's compliance with these statements and codes.

### Role and duties of the BBC Executive Board

- D2.1 The Executive Board has responsibility for ensuring compliance with the statement of policy on competitive impact, statement of policy on fair trading and competitive impact codes adopted by the BBC Trust.
- D2.2 The Executive Board must adopt and publish 'Fair Trading and Competitive Impact Guidelines' on the practical implications of the BBC Trust's published statement of policy on competitive impact, statement of policy on fair trading and its competitive impact codes (together the 'Fair Trading Policy and Competitive Impact codes'). Such guidelines, and any amendments thereon, must be approved by the BBC Trust prior to adoption.<sup>34</sup>

## Procedures

### BBC Trust direction

- D3.1 As required by the Charter and Agreement, the BBC Trust has adopted and publishes the following:
- (a) statement of its policy on the competitive impact of the BBC's activities on the wider market

<sup>29</sup> BBC Charter Article 23(e)

<sup>30</sup> BBC Agreement, Clause 66. See also:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/fair\\_trading/competitive\\_impact\\_statement.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/fair_trading/competitive_impact_statement.pdf)

<sup>31</sup> BBC Charter, Article 24(2)(k) and BBC Agreement, Clause 65. See also:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/fair\\_trading/policy.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/fair_trading/policy.pdf)

<sup>32</sup> BBC Agreement Clause 66(2)

<sup>33</sup> BBC Agreement Clause 66(5)

<sup>34</sup> BBC Agreement Clause 67

- (b) competitive impact codes (dealing with those aspects of the operation of the UK Public Service that, in the BBC Trust's view, could raise significant issues regarding the competitive impact of the BBC's activities)
- (c) statement of policy on fair trading.

D3.2 The BBC Trust requires the Executive Board to report half-yearly to the Trust on its compliance with these policies and codes.

D3.3 Additionally the BBC Trust requires the Executive Board to bring any serious issues which arise outside of this reporting cycle to the Trust in a timely manner for its consideration.

#### **BBC Trust review of policies and codes**

D3.4 The BBC Trust will keep the above policies and codes under review and conduct a comprehensive review of each, which will include public consultation, at least once every three years.<sup>35</sup>

#### **Content of the competitive impact codes**

D3.5 In reviewing and updating its codes, the BBC Trust must have regard:

- (a) to the extent that the BBC Trust considers them to be relevant, to any fair and effective competition codes issued by Ofcom for the purposes of applying to any description of broadcasters other than the BBC
- (b) to any views expressed by Ofcom as to matters that should be covered by the BBC Trust's codes.

D3.6 The duty to 'have regard' to any Ofcom codes does not mean the BBC Trust necessarily has to follow Ofcom's approach or the requirements contained in Ofcom's codes, even where such codes are relevant.<sup>36</sup>

D3.7 The BBC Trust's codes may deal with matters which are not covered by any fair and effective competition codes issued by Ofcom.<sup>37</sup>

#### **Content of the fair trading policy**

D3.8 The Fair Trading Policy outlines the relevant key principles by which the BBC is required to abide.

D3.9 Unless stated otherwise, it applies to all trading activities which the BBC or its subsidiaries engage in, whether or not in connection with its commercial services.<sup>38</sup>

D3.10 The Policy distinguishes (where possible) between those matters which, in the BBC Trust's view, are the BBC's legal requirements and those which are not.<sup>39</sup>

#### **The Executive Board's fair trading and competitive impact guidelines**

D3.11 Following publication of the Fair Trading Policy and Competitive Impact Codes, the Executive Board adopted and published 'Fair Trading Guidelines' on:

<sup>35</sup> BBC Agreement Clause 65(4) and 66(6)

<sup>36</sup> BBC Agreement Clause 66(4)

<sup>37</sup> BBC Agreement Clause 66(4)

<sup>38</sup> BBC Agreement Clause 65(2).

<sup>39</sup> BBC Agreement Clause 65(5).

- (a) the practical implications of the BBC Trust's fair trading policy so far as they relate to the functions of the Executive Board and relevant BBC subsidiaries
- (b) the application of the competitive impact policy and codes.

D3.12 The Executive Board must keep its guidelines under review to ensure they remain compliant with the BBC Trust's published policies and codes. Any amendments proposed by the Executive Board must be approved by the BBC Trust prior to adoption by the Executive Board.

#### **Executive reports**

D3.13 The Executive Board is required to submit half-yearly reports to the BBC Trust's Finance and Compliance Committee on its compliance with these policies and codes, with additional ad hoc reporting should significant issues arise outside this reporting cycle.

D3.14 It is up to the Executive Board to determine the appropriate content of these reports subject to the following minimum content:

- (a) significant risks to compliance
- (b) complaints upheld.

#### **BBC Trust review**

D3.15 The BBC Trust will review the annual report from the external auditors on the Executive Board's fair trading processes and compliance with these.

D3.16 In addition to reviewing the half-yearly reports referred to above, the BBC Trust will also meet with the following people at least annually without the Executive present:

- (a) Chair of Executive Board's Fair Trading Committee
- (b) external fair trading auditors.

D3.17 If the BBC Trust has any concerns arising from its actions above it may request further explanations from the Executive Board or the Executive Board's Fair Trading Committee.

#### **Complaints process**

D3.18 The arrangements for fair trading complaints and appeals are set out within the BBC Trust's complaints procedures.

## **Outputs and timings**

D4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part D 'fair trading arrangements' of this protocol.

- (a) The BBC Trust will adopt a statement of policy on fair trading and will hold the Executive Board to account for compliance with it.
- (b) The BBC Trust will adopt codes dealing with those aspects of the operation of the UK's Public Services that in the Trust's view could raise significant issues regarding the competitive impact of the BBC's activities.

- (c) The BBC Trust will hold a review, including a public consultation, of its fair trading policy and competitive impact codes every three years.
- (d) The Executive Board must adopt and publish 'Fair Trading and Competitive Impact Guidelines' on the practical implications of the BBC Trust's published statement of policy on competitive impact, statement of policy on fair trading and its competitive impact codes (together the 'Fair Trading Policy and Competitive Impact codes').
- (e) The Executive Board will report to the BBC Trust half-yearly on its compliance with these policies and codes, and will report to the Trust on any serious issues which arise outside this reporting cycle.
- (f) The BBC Trust will include a statement in its Annual Report and Accounts outlining compliance by the Executive Board during the year with fair trading processes.
- (g) The BBC Trust will review the annual report from external auditors regarding fair trading processes and compliance.

## **E LICENCE FEE COLLECTION ARRANGEMENTS**

### **Role and duties of the BBC Trust**

- E1.1 The Charter requires the BBC Trust to ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.<sup>40</sup>

### **Role and duties of the BBC Executive Board**

- E2.1 The Executive Board has operational responsibility for reviewing and overseeing the detailed arrangements for the collection of the licence fee.

### **Procedures**

#### **BBC Trust direction**

- E3.1 The BBC Trust requires the Executive Board to submit an annual review of collection activities to the BBC Trust or relevant Committee. This will include any proposed changes in collection strategy for approval by the BBC Trust.
- E3.2 The BBC Trust requires the Executive Board to report periodically on key performance indicators – financial and non-financial.
- E3.4 The BBC Trust requires the Executive Board to include performance against key collection indicators within its part of the BBC Annual Report and Accounts.

#### **Executive reports**

- E3.5 The Executive is responsible for determining the appropriate content of the annual collection arrangements report subject to the following minimum content:
- (a) key principles concerning the collection and enforcement of the licence fee
  - (b) performance against key performance indicators including evasion rate, collection costs, numbers of complaints
  - (c) any proposed changes in collection strategy.
- E3.6 The Executive will report performance against key indicators within its monthly finance report and also publicly in the BBC Annual Report and Accounts.

### **Outputs and timings**

- E4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part E 'licence fee collection arrangements' of this protocol.
- (a) The BBC Executive will submit to the BBC Trust an annual review of collection activities. Performance against the key licence fee collection performance indicators will be included within Part 2 of the Annual Report and Accounts.
  - (b) The BBC Executive must report periodically to the BBC Trust on key performance indicators – both financial and non financial.

<sup>40</sup> BBC Charter Article 24(2)(m)

## F DIGITAL SWITCHOVER

### Role and duties of the BBC Trust

- F1.1 The Charter gives the BBC Trust the responsibility for securing the effective promotion of the BBC's Public Purposes; the Trust will hold the Executive Board to account for this.<sup>41</sup> The sixth Purpose requires, amongst other things, the BBC to take a leading role in the switchover to digital television.<sup>42</sup> Accordingly the BBC Trust must hold the Executive Board to account for its management of the BBC's role in digital switchover.
- F1.2 The BBC Trust is required to define suitable performance criteria and measures against which the Executive Board's delivery of specific obligations in the Agreement concerning this purpose can be assessed.<sup>43</sup>
- F1.3 The BBC Trust must approve the communications plan drawn up by the Executive Board regarding digital switchover, and any revisions thereon.<sup>44</sup>
- F1.4 The BBC Trust is required to provide the relevant Secretary of State with an annual report on the progress that has been made towards digital switchover.<sup>45</sup>

### Role and duties of the BBC Executive Board

- F2.1 The Executive Board has responsibility for ensuring that the BBC has operational plans in place to meet the BBC's obligations in relation to digital switchover which are set out in the Agreement.<sup>46</sup>
- F2.2 These obligations include the requirements:
- (a) to deliver against a coverage plan agreed by the relevant Secretary of State
  - (b) to draw up a communications plan regarding digital switchover
  - (c) to comply a scheme agreed with the relevant Secretary of State concerning the provision of targeted help.<sup>47</sup>

## Procedures

### BBC Trust direction

- F3.1 In order to ensure effective oversight of digital switchover arrangements, the BBC Trust sets a purpose remit – 'Leading digital switchover and encouraging emerging

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<sup>41</sup> BBC Charter Article 22(c)

<sup>42</sup> BBC Charter Article 4(f)

<sup>43</sup> BBC Charter Article 24(2)(b) Specific duty to define measures against which performance against delivery of the public purposes may be judged.

<sup>44</sup> BBC Agreement Clause 38(2)

<sup>45</sup> BBC Agreement Clause 41

<sup>46</sup> BBC Agreement Clause 35 (3), Clause 38(2), Clause 39(1)

<sup>47</sup> BBC Agreement Clause 39



communications technologies' – outlining how the BBC's sixth public purpose will be met.<sup>48</sup>

- F3.2 The BBC Trust requires the Executive Board to provide purpose plans for approval which outline how it intends to promote the purpose remit. Any significant updates to these plans require further BBC Trust approval.
- F3.3 The BBC Trust will require the Executive Board to report biannually on progress against the purpose plans, including outcome against any performance measures and milestones set by the Trust.

#### Executive Board reports

- F3.4 The Executive Board's purpose plans, and any subsequent amendments thereon, outlining how it intends to promote the purpose remit, must be submitted to the BBC Trust for approval. These plans must:
- (a) include key milestones against which performance will be judged
  - (b) take account of the requirements imposed on the BBC as set out in clauses 34-40 of the Agreement.
- F3.5 The Executive Board must submit half-yearly progress reports to the BBC Trust. It is up to the Executive Board to determine the appropriate content of these reports subject to the following minimum content:
- (a) progress as measured against the Executive Board's performance plan and coverage plan
  - (b) implementation of new broadcasting infrastructure
  - (c) broadcast coverage achieved for BBC digital broadcast platforms
  - (d) confirmation of broadcast coverage of analogue services by region up to digital switchover
  - (e) details of any developments regarding the coverage plan within clause 35(3)-(5) of the Agreement
  - (f) efforts to ensure effective communication of digital switchover, including work with DigitalUK
  - (g) details and progress of any specific pilots
  - (h) any specific regional issues
  - (i) performance measures concerning targeted help activities
  - (j) BBC financial contributions to achieving switchover
  - (k) risks to delivering the programme.
- F3.6 In addition, the Executive Board will provide an annual report summarising progress for the BBC Trust to approve before submitting it to the relevant Secretary of State.
- F3.7 Any significant risks to delivering the programme or issues should be brought to the BBC Trust's attention by the Executive Board as they arise, in addition to the reporting requirements above.

<sup>48</sup> BBC Charter Article 24(2)(a). See also Protocol A1 BBC Public Purposes.

**Investment decisions**

F3.8 The BBC Trust will consider specific issues and investment proposals which may be related to digital switchover (e.g. investment cases) through the standard Trust reporting and approval processes, as outlined in part B of this protocol.

**BBC Trust review**

F3.9 In addition to reviewing the various reports referred to above, the BBC Trust will also consider relevant concerns highlighted by the Audience Councils as necessary.

**Outputs and timings**

F4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part F 'digital switchover' of this protocol.

- (a) The BBC Trust will define performance criteria and measures to enable assessment of the Executive Board's delivery of digital switchover obligations.
- (b) This protocol requires a number of reports to be provided to the BBC Trust by the Executive Board:
  - twice yearly reports on progress against towards digital switchover
  - timely reports by the Executive Board of significant risks to the delivery of digital switchover.
- (c) The BBC Trust must provide the relevant Secretary of State with an annual report on the progress that has been made towards digital switchover.
- (d) The Executive Board must have operation plans in place to ensure the BBC meets its obligations in relation to digital switchover as set out in the Agreement.
- (e) The BBC Trust will set a purpose remit covering, among other issues, digital switchover. The Executive Board will provide a purpose plan setting out how it will meet the obligations in this purpose remit.

## **G EFFICIENT USE OF THE RADIO SPECTRUM**

### **Role and duties of the BBC Trust**

- G1.1 The Agreement gives the BBC Trust the duty to secure the efficient use of the radio spectrum that is available for use by the BBC or its contractors.<sup>49</sup>
- G1.2 The BBC Trust considers and approves the BBC's spectrum use strategy and any significant changes to this.

### **Role and duties of the BBC Executive Board**

- G2.1 The Executive Board is responsible for developing a strategy, for BBC Trust consideration and approval, which sets out the BBC's use of spectrum capacity across its portfolio of services.
- G2.2 The Executive Board has operational responsibility for the BBC's distribution arrangements and must seek BBC Trust approval for any significant changes to the approved strategy.

## **Procedures**

### **BBC Trust direction**

- G3.1 The BBC Trust requires the Executive Board to submit proposals for any significant changes in spectrum use to the Trust for consideration and approval.
- G3.2 The BBC Trust requires the Executive Board to report annually on the BBC's distribution performance.

### **Executive reports**

- G3.3 It is up to the Executive Board to determine the appropriate content of any report to the BBC Trust on distribution performance subject to the following minimum content:
- (a) assessment of sound / picture quality across the various platforms
  - (b) robustness / resilience
  - (c) utilisation of spectrum
  - (d) value for money of spectrum use
  - (e) prioritisation of spectrum capacity

### **BBC Trust review**

- G3.4 The BBC Trust will commission periodic reviews to provide it with an independent assessment of how efficiently and effectively the BBC uses the spectrum which it has available.

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<sup>49</sup> BBC Agreement Clause 42(1)

## Outputs and timings

- G4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part G 'efficient use of the radio spectrum' of this protocol.
- (a) The BBC Trust will consider and approve the Executive Board's spectrum use strategy.
  - (b) The Executive Board will report annually to the BBC Trust on distribution performance.
  - (a) The BBC Trust will commission and publish its periodic independent reviews of BBC spectrum use. The BBC Trust will undertake such reviews at least once every three years.

## H LEGAL COMPLIANCE

### Role and duties of the BBC Trust

- H1.1 The Charter makes the BBC Trust responsible for holding the Executive Board to account for the BBC's compliance with regulatory requirements and the general law.<sup>50</sup>
- H1.2 The BBC Trust is responsible for ensuring the compliance of the Trust itself and the Trust Unit with applicable legal and regulatory requirements.

### Role and duties of the BBC Executive Board

- H2.1 The Charter makes the Executive Board responsible for ensuring compliance with all legal and regulatory requirements placed upon the BBC except to the extent that such requirements relate to the affairs of the BBC Trust or the Trust Unit.<sup>51</sup>

## Procedures

### BBC Trust direction

- H3.1 The BBC Trust requires the Executive Board to report regularly to the Trust on how it is complying with the law and other regulatory requirements, highlighting any significant risks to such compliance and the actions it is taking to mitigate those risks. Such reports should be provided every six months, comprising:
- (a) an interim update report covering the first six months of each year
  - (b) a full-year report, covering the whole of the financial year.
- H3.2 Additionally, the BBC Trust requires the Executive Board to bring to it any significant threats or challenges to the BBC's regulatory or legal compliance which occur on an ad hoc basis, in a timely manner for its consideration.

### Executive compliance reports

- H3.3 It is up to the Executive Board to determine the appropriate content of the half-yearly compliance reports subject to the following minimum content:
- (a) risks associated with the BBC's requirement to comply with its statutory and other legal duties
  - (b) compliance with regulatory requirements
  - (c) compliance with statutory and other legal duties, including legal requirements for companies
  - (d) management of occupational risk
  - (e) statistics on litigation and employment cases, including details of major cases:
    - volume and nature of cases handled;
    - trials record; and

<sup>50</sup> BBC Charter Article 24(2)(f)

<sup>51</sup> BBC Charter Article 38(1)(d)

- litigation pending.

(f) any specific issues notified in advance by the BBC Trust to the Executive Board.

H3.4 When the Executive Board identifies significant threats or challenges to the BBC's regulatory or legal compliance outside of the half-yearly reporting framework, it must report these promptly to the BBC Trust in an ad hoc report. This report must set out the issue and explain the actions the Executive Board is taking to mitigate the threat to an acceptable level.

## Outputs and timings

H4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part H legal compliance of this protocol.

- (a) The Executive Board will report twice yearly to the BBC Trust on how it is complying with the law and other regulatory requirements.
- (b) The Executive Board will bring to the BBC Trust and signification threats or challenges to the BBC's legal or regulatory compliance.
- (c) The Trust will include a statement on legal compliance within its Annual Report and Accounts (usually published in July).

## I BBC's QUOTAS AND TARGETS

### Role and duties of the BBC Trust

- 11.1 The Agreement requires the BBC Trust to approve guidelines designed to secure appropriate standards in the content of the BBC's UK Public Services.<sup>52</sup>
- 11.2 The Agreement sets out specific obligations on the BBC in relation to:
- (a) news and current affairs<sup>53</sup>
  - (b) programming quotas for original productions<sup>54</sup>
  - (c) programming for the nations and regions<sup>55</sup>
  - (d) programme-making in the nations and regions<sup>56</sup>
  - (e) quotas for independent productions<sup>57</sup>
  - (f) programmes to be reserved for independent productions<sup>58</sup>
  - (g) the Window of Creative Competition (WOCC)<sup>59</sup>
  - (h) production of radio programmes and material for online services<sup>60</sup>
  - (i) a code relating to the provision for the deaf and visually impaired<sup>61</sup>
- 11.3 Additionally, the Communications Act 2003 (schedule 12) and European Union Directive 2007/65/EC of the European Parliament and Council set requirements in relation to television programme production.
- 11.4 The BBC Trust is responsible for holding the Executive Board to account for the BBC's compliance with the above regulatory requirements.

### Role and duties of the BBC Executive Board

- 12.1 The Executive Board is responsible for ensuring that the BBC complies with the quotas and targets set by the BBC Trust or Ofcom concerning the specific obligations mentioned above.<sup>62</sup>
- 12.2 The Executive Board is responsible for monitoring performance against the quotas and targets and providing assurances to the BBC Trust on compliance by way of a regular report on progress towards the achievement of all quotas within the relevant year and its performance on each quota annually.

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<sup>52</sup> BBC Agreement Clause 43

<sup>53</sup> BBC Agreement Clause 47

<sup>54</sup> BBC Agreement Clause 49

<sup>55</sup> BBC Agreement Clause 50

<sup>56</sup> BBC Agreement Clause 51

<sup>57</sup> BBC Agreement Clause 52

<sup>58</sup> BBC Agreement Clause 53

<sup>59</sup> BBC Agreement Clauses 54-57

<sup>60</sup> BBC Agreement Clause 58

<sup>61</sup> BBC Agreement Clause 59

<sup>62</sup> Note that these reflect the European Union Directive mentioned in paragraph 11.3.

## Procedures

### BBC Trust direction

- I3.1 Where quotas are to be set by the BBC Trust in accordance with specific requirements set out in the Charter and Agreement, the BBC Trust will, acting within the limits of its discretion, determine the areas where it considers quotas to be desirable, and define and set the levels of such quotas.
- I3.2 The BBC Trust may introduce quotas in areas where they are not currently set if it considers this to be appropriate.
- I3.3 Where the BBC is subject to quotas imposed externally by Ofcom, the BBC Trust will, prior to Ofcom determining the levels to be achieved, make representations to Ofcom to express its view on the appropriate levels of such quotas.
- I3.4 The BBC Trust will take into account advice from the Executive Board in determining the scope and levels of quotas and in making representations to Ofcom.
- I3.5 The BBC Trust will require the Executive Board to submit to it every half-year a summary report on progress towards the achievement of all annual quotas.
- I3.6 The BBC Trust will require the Executive Board to report fully on its performance against each quota annually as soon as possible after the end of the relevant measurement year and in time for the outcomes to be made public in the BBC's Annual Report and Accounts.
- I3.7 The BBC Trust will require regular audit assurance from the Executive Board that both its processes and its performance figures are robust.

### BBC Trust consultation with Ofcom

- I3.8 In respect of certain of the requirements referred to above at I1.2, the BBC Trust is required to consult with Ofcom before imposing them. In respect of certain other requirements under those clauses, the BBC Trust cannot impose them without first securing the agreement of Ofcom.
- I3.9 In relation to the requirements set out in BBC Agreement Clauses 47, 49, 50, 51 and 52, the following arrangements for developing and agreeing proposals with Ofcom will apply:
- (a) each year the Trust Unit will, after liaison with the BBC Executive, develop draft proposals for consideration no later than the September meeting of the BBC Trust (or appropriate Trust committee)
  - (b) if the draft proposals are approved, the Trust Unit will co-ordinate the process of consultation and/or agreement (as applicable) with Ofcom, ensuring that the BBC Trust and the Executive Board are kept informed of progress and the agreed outcomes.

### Executive Board reports

- I3.10 The Executive Board has developed and adopted a statement of operation for television production which sets out how the requirements arising from BBC Agreement Clauses 47, 49–56 and 59 of the Agreement operate in practice and how it seeks to ensure that the requirements are met.



- I3.11 The Executive Board has developed and adopted a statement of operation of the external production quota for radio services which sets out how the arrangements arising from BBC Agreement Clause 58 operate in practice and how it seeks to ensure that the requirements are met.
- I3.12 The Executive Board has developed and adopted a statement of operation of the external supplier quota for online output which sets out how the arrangements arising from BBC Agreement Clause 58 operate in practice and how it seeks to ensure that the requirements are met.
- I3.13 Each of the above statements was subject to the approval of the BBC Trust, and has been made public.<sup>63</sup> The Executive Board must ensure that the application of the statements and any associated measurement arrangements are subject to appropriate risk control processes, and that appropriate assurance to this effect is included in annual reporting to the BBC Trust.
- I3.14 The Executive Board is responsible for monitoring performance against the quotas and targets for television, radio and online services respectively and providing assurances to the BBC Trust on compliance by way of a regular half-yearly report on progress towards the achievement of all quotas within the relevant year.
- I3.15 The Executive Board should report to the BBC Trust on an interim basis where a significant risk of not achieving a quota arises. The BBC Trust may request further updates as necessary to ensure appropriate remedial action is taken.
- I3.16 As soon as possible after the end of each financial year (and in any event within the timescale necessary for inclusion of material in the BBC Annual Report and Accounts), the Executive Board must submit a report to the BBC Trust which includes the outturn for each of the quotas, including identifying separately from the in-house and independent quotas the outturn for programmes commissioned through the WOCC, along with the Executive Board's commentary on the effectiveness of the operation of the arrangements for the year concerned.

#### **BBC Trust review**

- I3.17 The BBC Trust will review the half-yearly reports on quota compliance provided to it by the Executive Board.
- I3.18 The BBC Trust may from time to time commission independent reviews, either in relation to individual quotas or more broadly.
- I3.19 The BBC Trust is required to review the operation of BBC Agreement Clauses 54, 55 and 56 (concerning the operation of the WOCC) at least every two years.<sup>64</sup> The Trust Unit will liaise with the Executive Board over the terms of reference for its biennial review of the operation of the WOCC and associated arrangements. The Trust Unit's proposals for the terms and conduct of the review will be subject to approval from the BBC Trust, and the findings will be reported to the Trust. The BBC Trust will then publish its conclusions.

<sup>63</sup> See: [www.bbc.co.uk/commissioning/futuremedia/statement\\_of\\_online.doc](http://www.bbc.co.uk/commissioning/futuremedia/statement_of_online.doc)

<sup>64</sup> BBC Agreement Clause 57(2)

## Outputs and timings

- 14.1 This section sets out a summary of the key outputs, and where known, timings as set out in part I 'BBC's quotas and targets' of this protocol.
- (a) Where required by the Charter and Agreement, the BBC Trust will set quotas and targets for the BBC
  - (b) The Executive Board will report to the BBC Trust annual on its compliance with quotas and targets twice yearly.
  - (c) The BBC Trust will make representations to Ofcom to express its view on quotas set by Ofcom prior to these being set.
  - (d) The Executive Board will provide regular audit assurance to the BBC Trust that both its processes and performance figures are robust.
  - (e) The BBC Trust will report publicly in the BBC's Annual Report and Accounts on those targets and quotas for which it is responsible for reporting.
  - (f) For those targets and quotas for which Ofcom is responsible for reporting, the BBC Trust will publish the BBC's self-assessment of performance against the measures.
  - (g) The Executive Board will develop and adopt statements of operation for television production, the external production quota for radio services and the external supplier quota for online.
  - (h) The BBC Trust will commission independent reviews as required.
  - (i) The BBC Trust will review the operation of Charter clauses 54, 55 and 56 (concerning the operation of the WOCC) at least every two years.

## **J ARRANGEMENTS FOR THE TRAINING OF BBC STAFF**

### **Role and duties of the BBC Trust**

- J1.1 The BBC Trust receives a report from the Executive Board once a year on the current operation and effectiveness of the arrangements for the training and re-training of BBC staff engaged in connection with providing any of the UK Public Services or making programmes for inclusion in any of those services.<sup>65</sup>
- J1.2 The BBC Trust is required to publish its own observations on the operation and effectiveness of these arrangements.<sup>66</sup>

### **Role and duties of the BBC Executive Board**

- J2.1 The Executive Board must make arrangements for the training and re-training of BBC staff engaged in providing any of the UK Public Services or making content for inclusion in any of those services.<sup>67</sup>

## **Procedures**

### **Direction provided by the Agreement**

- J3.1 The Agreement requires that the training and re-training provided under the arrangements overseen by the Executive Board must make an effective contribution to:
- (a) the promotion of the BBC's public purposes, and in particular, that of stimulating creativity and cultural excellence
  - (b) the preparation and maintenance of a highly-skilled media workforce across the audio-visual industry
  - (c) competitiveness and productivity in that industry<sup>68</sup>
- J3.2 The Executive Board must take appropriate steps to make those affected by the arrangements aware of them<sup>69</sup>
- J3.3 The Executive Board must review the operation and effectiveness of the arrangements and report on this to the BBC Trust at least once each year<sup>70</sup>

### **Executive report**

- J3.4 It is up to the Executive Board to determine the appropriate content of the annual report to the BBC Trust, subject to demonstrating compliance with the directions set out in the Agreement and with any additional requirements set out by the BBC Trust.

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<sup>65</sup> BBC Agreement Clauses 84(1) and 85(2)

<sup>66</sup> BBC Agreement Clause 84 and Clause 85

<sup>67</sup> BBC Agreement Clause 84(1)

<sup>68</sup> BBC Agreement Clause 84(2)

<sup>69</sup> BBC Agreement Clause 85(1)(a)

<sup>70</sup> BBC Agreement Clauses 84 and 85

**BBC Trust review**

- J3.5 The BBC Trust will evaluate the BBC's arrangements against the requirements of the Agreement, and will also consider the BBC's arrangements against the public purposes.
- J3.6 The BBC Trust may consult industry and stakeholder groups where it considers it necessary and appropriate. It may also consider how the BBC's arrangements compare against those for other organisations in the broadcasting and media industry.

**Outputs and timings**

- J4.1 This section sets out a summary of the key outputs, and where known, timings as set out in part J 'Arrangements for the training of BBC staff' of this protocol.
- (a) The Executive Board must make arrangements for the training and re-training of BBC staff engaged in connection with providing any of the UK Public Services or making programmes for inclusion in any of those services.
  - (b) The BBC Trust receives from the Executive Board a report once a year on the current operation and effectiveness of the arrangements for the training and re-training of BBC staff engaged in connection with providing any of the UK Public Services or making programmes for inclusion in any of those services
  - (c) The BBC Trust publishes its own observations on the operation and effectiveness of these arrangements. This is usually done in the BBC Trust's part of the Annual Report and Accounts.

## K EQUALITY AND DIVERSITY

### Approach: BBC equality and diversity duties

- K1.1 The BBC promotes equality and diversity as part of its commitment to serving the needs of all audiences. It does this via a number of initiatives and actions, including a BBC Diversity Strategy.
- K1.2 In addition the BBC must comply with applicable equality-related legislation. This includes complying with the public sector equality duties in relation to its public functions, preparing and publishing equality schemes, and reviewing those schemes every three years.<sup>71</sup>
- K1.3 The BBC also has a duty under the Agreement to make arrangements to promote equality in employment.<sup>72</sup>

## Role and duties of the BBC Trust

### Diversity strategy

- K2.1 The Trust will assess the performance of the BBC Executive in delivering against the BBC's Diversity Strategy.

### Public sector equality duties

- K2.2 The Trust must itself comply with the public sector equality duties.<sup>73</sup> It is responsible for:
- (a) contributing to the BBC Executive's development and production of the BBC's disability, gender and race equality schemes
  - (b) monitoring performance against its own action plans
  - (c) providing a report on progress made against its own action plans.

### Employment arrangements

- K2.3 The Agreement requires the Trust to review the Executive Board's annual report on its arrangements for promoting quality of opportunity in employment.<sup>74</sup>
- K2.4 The Trust must publish its observations on the Executive's report on the current operation and effectiveness of the Executive's arrangements for promoting equal opportunities in employment on the BBC Trust website on an annual basis.<sup>75</sup>

<sup>71</sup> References in this Protocol to the public sector equality duties are to certain statutory duties, so far as they apply to the BBC: see the Sex Discrimination Act 1975, sections 76A to 76C; the Race Relations Act 1976, sections 71 to 71B; the Disability Discrimination Act 1994, sections 49A to 49D; and certain statutory instruments made under those Acts (listed at the end of this Protocol). We regard the BBC's public functions to be (i) regulatory functions of the Trust, (ii) television licensing and (iii) a residual category of BBC functions including digital switchover, defence and emergency arrangements and BBC Monitoring

<sup>72</sup> BBC Agreement Clause 83

<sup>73</sup> The public sector equality duties apply to the BBC in respect of its public functions only. We regard the BBC's public functions to be (i) regulatory functions of the Trust, (ii) television licensing and (iii) a residual category of BBC functions including digital switchover, defence and emergency arrangements and BBC Monitoring.

<sup>74</sup> BBC Agreement Clause 85

<sup>75</sup> BBC Agreement Clause 85

## Role and duties of the BBC Executive Board

### Diversity strategy

K3.1 The Executive Board is responsible for implementing, monitoring and reporting on the BBC's Diversity Strategy and must report on this annually to the Trust and in Part Two of the Annual Report and Accounts.

### Public sector equality duties

K3.2 The Executive Board must comply with the public sector equality duties<sup>76</sup> including the development and production of the BBC's equality schemes, with input from the Trust as necessary.

K3.3 The Executive Board is responsible for providing the Trust with regular assessments of how well the BBC has met its equality duties.

K3.4 The Executive Board is responsible for conducting a more formal and major review of the equality schemes every three years. The BBC Trust will contribute to this review in respect of its own public sector equality duties.

### Employment arrangements

K3.5 The Executive Board is required<sup>77</sup> to make arrangements for promoting equality of opportunities in employment for men and women, people of different racial groups<sup>78</sup> and for disabled people.<sup>79</sup>

K3.6 The Executive Board is responsible for taking appropriate steps to make staff aware of these arrangements and to review them as necessary.<sup>80</sup>

K3.7 At least once a year the Executive Board will report to the Trust on the current operation and effectiveness of these arrangements.<sup>81</sup> This report will be published alongside the Trust's observations<sup>82</sup> on the Trust website.

## Procedures

### Trust review and reporting: diversity strategy

K4.1 The Trust's annual review on serving all audiences will be published in the Annual Report and Accounts Part One. This will include:

- (a) observations on the activity conducted by the BBC Executive as part of its commitment to equality and diversity

<sup>76</sup> The public sector equality duties apply to the BBC in respect of its public functions only. We regard the BBC's public functions to be (i) regulatory functions of the Trust, (ii) television licensing and (iii) a residual category of BBC functions including digital switchover, defence and emergency arrangements and BBC Monitoring

<sup>77</sup> BBC Framework Agreement Clause 83

<sup>78</sup> The expression "racial group" has the same meaning as in the Race Relations Act 1976 (or, in relation to persons employed in Northern Ireland, the Race Relations (Northern Ireland) Order 1997)

<sup>79</sup> The expression "disabled" has the same meaning as in the Disability Discrimination Act 1995

<sup>80</sup> BBC Agreement clause 85(1)

<sup>81</sup> BBC Agreement clause 85(1)

<sup>82</sup> BBC Agreement clause 85(2)

- (b) a summary of activity conducted by the BBC Trust as part of its commitment to equality and diversity.

**Trust review and reporting: public sector equality duties**

K4.2 The Trust will report on its performance in meeting the equality duties in the following ways:

- (a) an update within the BBC Executive's quarterly Compliance Report (which is submitted to the Trust on a bi-annual basis)
- (b) an annual performance summary published on the BBC Trust website
- (c) a commentary on its own performance in meeting the equality duties in Part One of the Annual Report and Accounts

K4.3 The Trust will also publish its observations on how well the BBC Executive is performing in meeting the equality duties.

K4.4 The Trust will contribute to the BBC Executive's annual review of the BBC's Equality Schemes

**Executive Board review and reporting: public sector equality duties**

K4.5 The Executive Board will regularly monitor and review the BBC's performance in meeting its equality duties. This will include an update within the BBC Executive's quarterly Compliance Report and an annual performance summary published on the BBC website.

K4.6 The Executive Board will conduct an annual review of the BBC's equality schemes, which should include the following:

- (a) progress status updates and any necessary amendments to the schemes' action plans;
- (b) annual performance summaries for each public function area, including any provided by the Trust; and
- (c) any necessary amendments to the schemes' text, following activity that year.

K4.7 As required under the equality duties, the Executive Board will conduct a more formal and major review of the equality schemes every three years.

**Trust direction regarding employment arrangements**

K4.8 The Trust requires the BBC Executive Board to provide an annual report on its arrangements for promoting equality of opportunity in employment. As a minimum, this should deal with the following areas:

- (a) the BBC's equal opportunities statement or policy
- (d) the current procedures for monitoring and collecting employee data and any related issues
- (e) a collection of statistics to monitor the diversity of those employed by the BBC<sup>83</sup>; and
- (f) an observation on trends from those statistics.

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<sup>83</sup> Men, women, people of different racial groups and disabled people across divisions and including all staff and senior management.

## Outputs and timings

K5.1 This section sets out a summary of the key outputs, and where known, timings as set out in part K 'Equality and diversity' of this protocol.

- (a) BBC equality schemes (reviewed and re-published at least once every three years).
- (b) An annual report in part two of the BBC's Annual Report and Accounts: BBC Executive summary on the diversity strategy, how well it has met its equality duties and arrangements for promoting equal opportunities in employment.
- (c) Both the BBC Executive's report on the arrangements on promoting equal opportunities in employment and the Trust's observations on the current operation and effectiveness of these arrangements are usually published in May.
- (d) BBC Diversity Strategy Implementation report.
- (e) The BBC's diversity strategy implementation report will be requested by the Trust on an annual basis.



## References

### 2.1 BBC Charter

The following articles in the BBC's Charter are relevant to this protocol:

- (a) BBC Charter Article 4 – The Public Purposes
- (b) BBC Charter Article 9 – Relationship between the Trust and the Executive Board
- (c) BBC Charter Article 22 – Guardians of the licence fee and the public interest
- (d) BBC Charter Article 23 – General duties
- (e) BBC Charter Article 24 – Functions of the Trust
- (f) BBC Charter Article 35 – Committees
- (g) BBC Charter Article 38 – Functions of the Executive Board
- (h) BBC Charter Article 45 – Annual reports and statements of accounts

### 2.2 BBC Framework Agreement

The following clauses in the Agreement are relevant to this protocol:

BBC Agreement Clause 12 – Making the UK Public Services widely available

BBC Agreement Clause 34-41 – Digital Switchover

BBC Agreement Clause 47 – News and current affairs

BBC Agreement Clause 49 – Programming quotas for original productions

BBC Agreement Clause 50 – Programming quotas for the nations and regions

BBC Agreement Clause 51 – Programme-making in the nations and regions

BBC Agreement Clause 52 – Quotas for independent productions

BBC Agreement Clause 54 – The Window of Creative Competition (WOCC)

BBC Agreement Clause 55 – Competitive opportunities for the production of non-network programmes

BBC Agreement Clause 56 – Programmes to be reserved for in-house production

BBC Agreement Clause 58 – Production of radio programmes and material for online services

BBC Agreement Clause 59 – Code relating to provision for the deaf and visually impaired

BBC Agreement Clause 65 – Fair trading statements of policy

BBC Agreement Clause 66 – Competitive impact

BBC Agreement Clause 74 – Reports and accounts about the commercial services

BBC Agreement Clause 79 – Value for money examinations

BBC Agreement Clause 81 – Defence and Emergency Arrangements

BBC Agreement Clause 83 – Equal Opportunities

BBC Agreement Clause 84 – Training

BBC Agreement Clause 85 – General provisions about arrangements made under clauses 83 and 84

BBC Agreement Clause 88 – Monitoring activities

### 13.3 Other documents

The following documents and legislation are relevant to this protocol:

- (a) BBC's equality schemes
- (b) Sex Discrimination Act 1975, especially sections 76A to 76C, and the Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (SI 2006/2930);
- (c) Race Relations Act 1976, especially sections 71 to 71B, and the Race Relations Act 1976 (Statutory Duties) Order 2001 (SI 2001/3458);
- (d) Disability Discrimination Act 1994, sections 49A to 49D, and the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 (SI 2005/2966);
- (e) Statement of policy on competitive impact: Competitive impact framework [http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/fair\\_trading/competitive\\_impact\\_statement.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/fair_trading/competitive_impact_statement.pdf)
- (f) Statement of policy on fair trading [http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/fair\\_trading/policy.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/fair_trading/policy.pdf)

Version	Date of publication	Approved by the Trust	Summary of changes since previous version
1.0	January 2007	9 & 10 January 2007	n/a
2.0	May 2010	18 February 2010	<p>This document has been updated to fit in the new protocol format, explain processes in more detail and pull together a number of previous protocols. It incorporates the previous protocols:</p> <ul style="list-style-type: none"> <li>- B7 Digital Switchover</li> <li>- C1 Financial Plans, Budgets &amp; Delegations</li> <li>- C2 Financial Reporting and Monitoring</li> <li>- C3 Trust Oversight of BBC risk Management Processes and Internal Controls</li> <li>- C4 Value for Money Investigations</li> <li>- D1 Fair Trading and Competitive Impact</li> <li>- D2 Legal Compliance</li> <li>- D3 The BBC's Quotas and Targets</li> <li>- D10 Arrangements for the Training and Re-training of BBC Staff</li> <li>- D11 Equal Opportunity Arrangements for BBC Staff</li> <li>- E4 Compliance with Statutory and Non-statutory Equality Duties.</li> </ul>