

Independent Investigation – Process Protocol

A Introduction

1. Lord Dyson ('the Investigator') has been appointed by the BBC Board to carry out an independent investigation into the circumstances around the 1995 BBC Panorama Interview with Diana, Princess of Wales ('the Investigation').
2. The scope of the investigation is set out in the Terms of Reference, set out at Appendix 1 to this Process Protocol.

This Protocol has been agreed between the Investigator and the BBC. It sets out the procedures under which the investigation is to be carried out, bearing in mind that it is in the public interest for the Investigation to be conducted at all times in a way that ensures:

- (a) The independence of the Investigator in determining how to undertake the work in order to discharge the Terms of Reference.
- (b) The thorough examination and consideration of the available evidence and the issues that the Investigator considers relevant to the Terms of Reference.
- (c) The fair treatment of individuals connected with the subject matter of the Investigation and all other parties whose interests are affected by its work.
- (d) The Investigation reaches its conclusions with all due expedition in the light of the public interest in having an outcome known as soon as possible
- (e) Having regard to the BBC's constitutional obligations to provide Value for Money, that the Investigation is conducted as efficiently and economically as possible.

None of the provisions in this Process Protocol shall be read or applied in such a way as to derogate from or compromise these principles.

B Administrative matters

3. The appropriate contact point for the Investigator at the BBC for all administrative matters, including funding of the investigation, will be Glyn Isherwood ('the Investigation Sponsor'). The role of the Investigation Sponsor is to ensure that the Investigator has the facilities and assistance they need to conduct the Investigation, and to brief the BBC on its logistical progress. The Investigation Sponsor will not be involved in advising the BBC in relation to its substantive response to the Investigation.
4. The appropriate contact point for the Investigator at the BBC for all substantive matters in respect of the BBC's engagement with and response to the Investigator will be Sarah Jones (the "Investigation Respondent").
5. The Investigation Respondent will be responsible for advising the BBC in relation to how it responds to requests from the Investigator in respect of the substantive matters under investigation as set out in the Terms of Reference.
6. The Investigator has appointed Fieldfisher LLP to act as Solicitors to the Investigation. The Solicitors to the Investigation will be responsible for sending and receiving all correspondence on behalf of the Investigator (as well as assisting the Investigator with the investigation and advising them in relation to its conduct). Fieldfisher will accordingly set up a dedicated email inbox for communications relating to the investigation. The BBC or any other person wishing to correspond

with the Investigator in relation to the Investigation, should send that correspondence to this inbox which is Dyson@fieldfisher.com.

7. To facilitate the investigator in conducting the investigation, particularly in relation to requesting and obtaining relevant documents and information, the BBC will set up a dedicated email inbox for communications relating to the investigation. The Investigator will send all communication relating to the investigation to this inbox, as this will ensure that they are logged and actioned efficiently.

C Documents, other information and meetings

Documents: requests and production

8. The Investigator will send all requests for the production of relevant documents held by the BBC (to include documents and communications held both in hard copy and in electronic and digital form) to the email address referred to in paragraph B7 above.
9. Provided that the documents requested for production are within the BBC's power, custody or control, they will be provided to the Investigator either in hard copy or electronic form (via a secure IT route) as soon as possible. No such documents will be withheld from the Investigator save for any documents which may tend to identify confidential journalistic sources and which cannot be sufficiently redacted. For the avoidance of doubt, the BBC shall provide the Investigator with copies of documents only and not originals. Inspection of the original documents will be facilitated on reasonable notice to the BBC.
10. Where documents are not within the BBC's possession, custody or control the Investigator will (through his Solicitors) contact the relevant person to request the document direct.

General information requests and general explanations

11. Where the Investigator requires any other information and/or explanations from the BBC as to how it carries out its editorial functions and such a request falls within the scope of the Terms of Reference, the Investigator will send a request for this information to the email address referred to in paragraph B7 above.
12. The BBC will respond as soon as possible to any such request.
13. Where the Investigator requires any other information and/or explanations from any other person as to how it carries out its activities and such a request falls within the scope of the Terms of Reference, the Investigator will send (through his solicitors) a request to the person concerned.

Meetings with individuals

14. Where the Investigator wishes to meet with any individual currently or formerly employed by the BBC, or a current or former contractor with the BBC, s/he will notify the BBC of the individuals s/he wishes to meet (using the email address referred to in paragraph B7 above, attaching a letter for the BBC to pass on to that individual).
15. The BBC will endeavour to secure the attendance at a meeting of any identified individuals who are its current or former employees or contractors save that for the avoidance of doubt, the BBC has no powers to instruct attendance of its former employees and must be mindful of its duty of care as an employer.

16. Attendance by an individual at a meeting with the Investigator is voluntary in that the Investigator has no power to compel their attendance.
17. Any meetings with individuals other than those mentioned in paragraphs 14 and 15 above will be arranged by the Solicitors to the Investigation.
18. Meetings will, to the extent possible, be arranged at a mutually convenient time for the Investigator and the individual concerned.
19. At least 5 days prior to meeting any individual, the Investigator will give them a written outline of the topics which s/he wishes to cover in the meeting and a list of the principal documents which s/he wishes to make reference to during the meeting. Topic and document lists for current and former employees and contractors of the BBC should be sent to the email address referred to in paragraph B7 above. The BBC will pass them on as quickly as possible to the individuals concerned. The Investigator will send topic and documents lists for other to the individuals concerned direct.
20. The Investigator will take steps to ensure that meetings are recorded and that a transcript of each meeting is produced. The Investigator will endeavour to agree the contents of each transcript with the individual concerned.
21. The Investigator will ask questions during such meetings.. The Investigator may be assisted by the Solicitors to the Investigation, but the Solicitors will not ask questions. The Individual may be accompanied at the meeting by a single friend, colleague or legal representative. The role of any such friend, colleague or representative will be to assist and support the individual, not to answer questions or make legal submissions.

D Advice, support and legal representation

22. The Investigator has no power to determine the civil or criminal rights of any person and it is not necessary for those affected by its work to engage a legal representative. They may, however, do so if they wish although any legal representative's role will be to advise the individual concerned, not themselves to participate in the Investigation process.
23. The BBC will ensure that current staff are aware of the assistance and support available to them through the BBC's Employee Assistance Programme.

Third Party Assistance

24. The Investigator may contact third parties directly for assistance in relation to the investigation. The BBC will, to the extent that it is able to do so, facilitate such assistance if requested to do so by the Investigator.

E Escalation

25. The BBC is committed to providing the Investigator with assistance to facilitate their conduct of the investigation. However, if the Investigator considers that the BBC is not providing them with the cooperation or information that they reasonably require to fulfil their responsibilities, they may escalate the matter to the Director General.

F Legal Privilege and Data Protection

Privilege

26. It may be necessary for the BBC to provide the Investigator with information contained in contemporaneous records and documents from the period 1995 and 1996 that is subject to its legal

privilege. The BBC will not withhold contemporaneous documents or records from 1995 or 1996 from the Investigator on the grounds of legal privilege but, for the avoidance of doubt, the provision of such material to the Investigator is solely for the purposes of this Investigation, and does not constitute a more general waiver of privilege for any other purpose and/or in respect of any other documents.

27. The Investigator may refer to privileged documents in their Report, but the Investigation Sponsor will decide, after consulting the Investigator, whether to redact any material attracting its privilege contained in their report before the Representations Process (see below) begins and prior to the Investigator's Report being published. If the BBC considers that redaction is necessary, it will explain the reasons for this when the Report is published.

Data Protection

28. The Investigator will be responsible for collecting and exercising professional judgment over the processing of any documents which contain personal data during the course of the Investigation. They will accordingly register as a Data Controller with the Information Commissioner's Office.
29. Where the BBC provides documents in its possession, custody or control to the Investigator in accordance with paragraph 9 above, the BBC and the Investigator will be joint data controllers in respect of the personal data that they contain. Both the BBC and the Investigator will comply with their obligations in this respect under the General Data Protection Regulation and the Data Protection Act 2018. For the avoidance of doubt, the BBC considers that processing personal data by passing it to the Investigator is necessary for the performance of an employment contract and the legitimate interests pursued by the BBC in establishing the Investigation in the public interest.

G Representations Process

30. Where the Investigator is minded to criticise individuals, groups of individuals whose members are identifiable or organisations (including the BBC) in their Report, the Investigator will conduct a Representations Process.
31. This will involve the Investigator writing to such individuals, groups and organisations setting out the proposed criticism and providing them with a reasonable opportunity to make written representations in response.
32. The Investigator will consider any such Representations before concluding the Investigation and finalising their Report.
33. The BBC will assist the Investigator in ensuring that proposed criticisms are distributed in a timely fashion to any current or former employees and the Investigator will send any correspondence seeking such representations to the email inbox referred to in paragraph B7 above in password protected format. The Investigator will separately provide the password to the individual concerned or their legal representative if the individual requests this.
34. Where the Investigator is minded to criticise any other individuals, organisations or groups, they will write to those persons direct.
35. All proposed criticisms that the Investigator is minded to make, and Representations made in response, shall remain confidential as between the Investigator and the person to whom they are addressed. The recipient of any proposed criticisms may, however, share them with their legal representative. If the recipient of any proposed criticisms wishes to share these with any other person, they must first obtain the express written consent of the Investigator.

H Governance and reporting

36. The Investigator will provide monthly updates to the Investigation Sponsor on the logistical progress of the Investigation, but not in relation to matters of substance.
37. The Investigator will raise directly with the Investigation Sponsor any matter which they consider to be so urgent or important that it needs to be disclosed to him / her.

I Report

38. At the conclusion of the Investigation, the Investigator will provide their Report to the Investigation Sponsor.
39. The Investigation Sponsor will secure all necessary internal approvals to prepare for publication.
40. The BBC will arrange for the Investigator's Report to be published within a reasonable period. Insofar as it considers that any redactions need to be applied to the text prior to publication for legal reasons, it will first consult the Investigator. If it applies any such redactions, it will publish an explanation for these at the same time as publishing the Report

J Interim Report

41. Where the investigator considers it appropriate or necessary to issue an interim report, that Report will be subject to all aspects of this Protocol.