

EDITORIAL POLICY GUIDANCE NOTE

RIGHT OF REPLY

(Last updated: October 2010)

EDITORIAL GUIDELINES ISSUES

This guidance note should be considered in conjunction with the following Editorial Guidelines:

- **Fairness**
See Editorial Guidelines Section 6 Fairness
- **Accuracy**
See Editorial Guidelines Section 3 Accuracy
- **Doorstepping**
See Editorial Guidelines Section 7 Privacy: Doorstepping

SUMMARY OF MAIN POINTS

- Offering a right of reply to those who are the subject of significant criticism or allegations of wrongdoing is a fairness obligation under the Ofcom Broadcasting Code. It can also help achieve accuracy in our output by serving as fact-checking and informing the nature of our allegations.
- There is no prescribed format that a right of reply should take. For example – if it is fair to do so – we may offer an interview, request a written statement for inclusion fairly in the output or simply telephone the subject of the allegations, note their response and reflect it fairly in the relevant output.

- Respondents should be given enough information and detail about the arguments and allegations to understand them and give an informed response. So long as that is achieved, there is no requirement to make copies of evidence available or to show the subject any secret filming.
- The amount of time that should be allowed for a response will change according to circumstances including the nature and complexity of the allegations, whether or not the allegations were already familiar to the subject of them, the nature of the subject and their resources, and whether there is a pressing need to broadcast in the public interest.
- To be fair, we should include material that is relevant to the allegations. It is not necessary to include material that may be considered irrelevant to the allegations. If we choose to paraphrase material rather than use direct quotes, the meaning must be fairly represented.
- The reply should normally be reflected in the same content as the allegations (for example, same programme, same edition of a series, or same website).

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Introduction

We have an obligation under the Ofcom Broadcasting Code to seek a response from individuals or organisations who are the subject of significant criticism or allegations of wrongdoing or incompetence. It is also responsible journalism to do so.

In addition to ensuring fairness to those coming under criticism, offering a right of reply can help achieve accuracy in our output. The response may serve as fact-checking and inform the nature of our allegations.

It is advisable to contact Programme Legal Advice as well as Editorial Policy when writing to seek a response to serious allegations of wrongdoing.

Formats for a Right of Reply

There is no prescribed format that a right of reply should take. For example – if it is fair to do so – we may offer an interview; request a written statement for inclusion fairly in the output; or simply telephone the subject of the allegations, note their response and reflect it fairly in the relevant output.

However, for pragmatic reasons at the very least, we should consider how detailed or involved the allegations are, and how much detail is required to give a fair response, when considering the format we intend to offer for a reply.

Information to be given to the respondent

Whatever format is offered for a response, it is important that the respondent has enough information and detail about the arguments and allegations to understand them and give an informed response.

In general, subjects of allegations should be given:

- a summary of nature, format and content of the output (including the title, if that is significant)
- information about where and when the output is to be broadcast (as far as is known)
- a summary of material allegations and criticisms that could be included in the output
- the date by which the subject would need to provide a response (and, if required, an earlier date by which the respondent should give indication of whether or not they intend to respond)
- contact details for further information should the subject wish to request it.

Approaches for a response do not normally have to explain all the evidence or detail the form it takes. However, the subject of the allegations should understand on what basis they are being made and normally have sufficient detail to make an informed response to evidence that will support those allegations (including, for example, specific incidents to be included in the output).

So long as that is achieved, there is no requirement to make copies of the evidence available or to show the subject any secret filming. A description of the evidence and the allegations that arise from it, sufficient to understand them and give fair opportunity to respond, will be acceptable. Additionally, it is not normally necessary even to volunteer the information that evidence takes the form of secret filming.

Nevertheless, questions from the subject of allegations should normally be answered honestly and as openly as fairness demands. On occasion there may be a balance to be struck between providing information to the subject of an investigation and protecting sources. On such occasions, it is advisable to discuss the matter with Editorial Policy.

Timing

Providing a fair opportunity to reply to allegations requires providing enough time to make a response.

There is no set amount of time that must be given. The Ofcom Broadcasting Code simply states that the subjects of significant allegations must be given a “timely opportunity to respond”.

The amount of time that is fair will change according to circumstances, including:

- the nature and complexity of the allegations. More detailed and complex allegations may require longer time for a response
- whether or not the allegations were already familiar to the subject of them. Detailed case studies that are completely new to the subject of an allegation may require more time to be thoroughly researched and responded to than cases or complaints that they are already familiar with
- the nature of the subject and their resources. With all other factors being equal, a large corporation with a sizable PR operation may be expected to respond quicker than a small business with just a few employees or an individual.
- whether there is a pressing need to broadcast in the public interest, for example because the reporting of allegations is likely to be frustrated by any delay, or because of the requirements of contemporaneous reporting.

Inclusion of the Reply in Output

The reply should normally be reflected in the same content as the allegations (for example, same programme, same edition of a series, or same website). There may be occasions when this is inappropriate (usually for legal or ethical reasons) in which case a senior editorial figure, or commissioning editor for Independents, should be

consulted. It may then be appropriate to consider whether an alternative opportunity should be offered for a reply at a subsequent date.

We are not obliged to include responses to allegations in their entirety, regardless of whether the response is an interview, written statement or other format. Similarly, responses need not be quoted verbatim, but merely have to be reflected. Exactly what is included, and how it is reflected, is a matter for the production team, so long as it achieves fairness.

To be fair, we should include material that is relevant to the allegations. It is not necessary to include material that may be considered irrelevant to the allegations. If we choose to paraphrase material rather than use direct quotes, the meaning must be fairly represented.

Refusals to Provide a Reply

Those who are offered the opportunity to reply to allegations may decline to make a contribution, choose to issue a statement when an interview was requested, or fail to respond altogether. This should not normally prevent us from broadcasting the allegations.

We may choose to make clear that the subject has declined our invitation or failed to respond. If the individual or organisation concerned provides a reason for not responding, that explanation should normally be included in the output if it would be unfair not to do so (for example, when they decline to respond because the allegations are the subject of pending or ongoing legal proceedings).

When the subject of allegations fails to provide a response (or withdraws a response they have given previously), but their views are known, we should normally reflect those known views in the output if due impartiality demands it or it would be unfair not to do so.

When it serves the public interest, we may decide to doorstep the subject of allegations who has failed to provide a reply.

Doorstepping as part of the Right of Reply process.

Whilst the issues raised by doorstepping are frequently ones of privacy, it can be helpful to think of doorstepping as the final part of the right of reply process.

Before we doorstep the subject of allegations, we should normally have offered the opportunity for a conventional right of reply. (For exceptions, see the Editorial Guidelines on Doorstepping Without a Prior Approach). When the subject declines to make a response, or fails to respond to our request, and the allegations are sufficiently serious that the public interest would be served by ensuring they are called to account, we may determine to seek a response by carrying out a doorstep.

When the subject of allegations is invited for interview but provides a written response instead, it is not normally appropriate to doorstep them unless their written response fails to address significant serious allegations or is misleading and/or evasive.

(See Editorial Guidelines Section 7 Privacy: Doorstepping)