

## Review – Process Protocol

### 1 Introduction

- 1.1** Gemma White KC (the “**Reviewer**”) has been appointed by the BBC Board to carry out a review into the BBC’s knowledge of and response to allegations, complaints and concerns about misconduct by Mr Tim Westwood during his work for the BBC (the “**Review**”).
- 1.2** The BBC has appointed Linklaters LLP (“**Linklaters**”) to assist the Reviewer.
- 1.3** The scope of the Review is set out in the Terms of Reference published on 4 August 2022.
- 1.4** It is in the public interest for the Review to be conducted at all times in a way that ensures:
- 1.4.1** the independence of the Reviewer in determining how to undertake the work in order to discharge the Terms of Reference;
  - 1.4.2** the thorough examination and consideration of the available evidence and the issues that the Reviewer considers relevant to the Terms of Reference;
  - 1.4.3** the fair and respectful treatment of individuals connected with the subject matter of the Review and all other parties whose interests are affected by its work;
  - 1.4.4** that the Review reaches its conclusions with all due expedition in light of the public interest in having an outcome known as soon as possible; and
  - 1.4.5** having regard to the BBC’s constitutional obligations to provide Value for Money, that the Review is conducted as efficiently and economically as possible.
- 1.5** This Process Protocol has been agreed between the Reviewer, Linklaters and the BBC. It sets out procedures relating to specific aspects of the Review. 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.

### 2 Administrative Matters

- 2.1** The Reviewer has been appointed by the BBC Board to conduct the Review. The Board has appointed a Sub-Committee (the “**Sub-Committee**”) which has delegated authority to take decisions relating to the Review.
- 2.2** The Reviewer’s contact point at the BBC for day-to-day conduct of the Review will be the BBC legal team, with primary points of contact as communicated to the Reviewer and to Linklaters from time to time. References to “**BBC Legal**” in this Process Protocol will be to this group.
- 2.3** BBC Legal’s role is to ensure that the Reviewer has the facilities and assistance needed to conduct the Review, to respond to requests for materials and information, to receive monthly progress reports from the Reviewer for the purposes of briefing the BBC on progress, and to manage administrative matters including funding of the Review.
- 2.4** Linklaters will be responsible for sending and receiving correspondence on behalf of the Reviewer (as well as assisting the Reviewer with the Review).

### **3 Cooperation with the police**

- 3.1** To the extent that the BBC or the Reviewer becomes aware that any police investigation into Mr Westwood's conduct is ongoing, Linklaters will endeavour to agree a memorandum of understanding with the relevant police force to address any risk of prejudice to the police investigation arising from the Review.
- 3.2** Persons providing evidence to the Reviewer will be advised as to the relevant contents of any memorandum of understanding referred to in paragraph 3.1 .

### **4 Documents, Other Information and Meetings**

#### *Documents: requests and production*

- 4.1** Linklaters will liaise with BBC Legal to implement a suitable hold notice and suspension of document destruction policies.
- 4.2** Linklaters or the Reviewer will send all requests for searches or the production of documents held by the BBC (to include documents and communications held both in hard copy and in electronic and digital form) to BBC Legal.
- 4.3** The BBC shall agree search terms, time periods, custodians (where relevant) and documents sets to be subject to an initial search with Linklaters and the Reviewer and conduct searches of such documents in hard copy and electronic form that are within its power, custody or control to produce an initial set of such documents which are likely to be relevant to the Review.
- 4.4** If the Reviewer considers that further searches are required, the Reviewer and Linklaters shall discuss the conduct of appropriate further searches with the BBC and endeavour to agree further searches to be performed by the BBC. The BBC shall use reasonable endeavours to conduct such further searches and make available the documents responsive to such searches to the Reviewer.
- 4.5** Provided that the documents requested for production are within the BBC's power, custody or control, they will be provided to Linklaters either in hard copy or electronic form (via a secure IT route) as soon as reasonably practicable. Linklaters will be responsible for the custody of such documents, and making them available to the Reviewer through secure means where required for the purpose of the Review.
- 4.6** No such documents will be withheld from the Reviewer 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 Reviewer with copies of documents only and not originals. Inspection of the original documents will be facilitated if reasonably deemed necessary on reasonable notice to the BBC.
- 4.7** Where documents are not within the BBC's possession, custody or control, the Reviewer will (through Linklaters) contact the relevant person to request those documents directly.

#### *General information requests and general explanations*

- 4.8** Where the Reviewer requires any other information and/or explanation from the BBC and such information and/or explanation is relevant to the Terms of Reference, the Reviewer or Linklaters will send a request for this information to BBC Legal.
- 4.9** The BBC will respond as soon as reasonably practicable to any such request.

- 4.10** Where the Reviewer requires any other information and/or explanation from any other person and such information and/or explanation is relevant to the Terms of Reference, the Reviewer or Linklaters will send a request to the person concerned.

*Meetings with individuals*

- 4.11** Where the Reviewer wishes to meet with any individual currently or formerly employed by the BBC, or a current or former contractor with the BBC, and the individual has not already contacted the Reviewer, they will notify BBC Legal (through Linklaters) of the individuals they wish to meet.
- 4.12** 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.
- 4.13** Meetings with individuals will be arranged by Linklaters. Where the Reviewer intends to talk to current and former employees and contractors of the BBC, and the individual has not already contacted the Reviewer, introductions will usually be made by BBC Legal or BBC HR and the Reviewer will provide BBC Legal with high-level details of the subject of the meeting to be conveyed to the relevant individual. BBC Legal and BBC HR will not share any information in relation to such meetings with any person other than the individual concerned.
- 4.14** Attendance by an individual at a meeting with the Reviewer is voluntary in that the Reviewer has no power to compel their attendance.
- 4.15** Meetings will, to the extent possible, be arranged at a mutually convenient time for the Reviewer and the individual concerned and may, in the Reviewer's discretion, be conducted remotely.
- 4.16** Where the Reviewer has requested a meeting with any individual, and subject to confidentiality protections being put in place (as appropriate), the Reviewer or Linklaters will send them a written outline of the topics which they wish to cover in the meeting and (where relevant) a list of the principal documents likely to be referred to during the meeting. Except where individuals agree to a shorter timeframe, topic and document lists will be sent 5 days in advance of any meeting.
- 4.17** The Reviewer will take steps to ensure that meetings are recorded and that a transcript of each meeting is produced. The Reviewer may decide, in exceptional circumstances, that a meeting will not be recorded. In any such case Linklaters will take a note of the meeting which they will seek to agree with the individual concerned.
- 4.18** The Reviewer will ask questions during such meetings. The Reviewer may be assisted by Linklaters, but Linklaters 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 legal representative will be to assist and support the individual, not to answer questions or make legal submissions.

*Third Party Assistance*

- 4.19** The Reviewer or Linklaters may contact third parties directly for assistance in relation to the Review. The BBC will, to the extent that it is able to do so, facilitate such assistance if requested to do so by the Reviewer.

## **5 Advice, Support and Legal Representation**

- 5.1** The Reviewer has no power to determine the civil or criminal rights of any person and it is not necessary for those affected by the Review 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 Review process.
- 5.2** Individuals contributing evidence to the Review will be provided by Linklaters with information about existing complaints routes, advisory services, support and counselling services available to them. The BBC will provide Linklaters with details of such options to provide to these individuals. The BBC will ensure that current staff are aware of the assistance and support available to them through the BBC's Employee Assistance Programme.

## **6 Escalation**

- 6.1** The BBC is committed to providing the Reviewer with assistance to facilitate their conduct of the Review. However, if the Reviewer considers that the BBC is not providing them with the cooperation or information that they reasonably require to carry out the Review in accordance with the Terms of Reference, they may escalate the matter to the Sub-Committee by notifying Leigh Tavaziva (through Linklaters) of the issue and the Sub-Committee will endeavour to resolve any such concerns.

## **7 Confidentiality, Legal Privilege and Data Protection**

### *Use of information*

- 7.1** Confidential information and documents provided to the Reviewer or Linklaters for the purpose of the Review will be treated in confidence. It will only be disclosed insofar as is necessary for the purposes of conducting and reporting on the Review, for complying with any legal obligation or with the provisions of this Process Protocol. Information may also be disclosed with the consent of the person who provided it. Appropriate confidentiality protections will be put in place in relation to individuals to whom confidential information is to be disclosed for the purposes of the review.
- 7.2** Subject to paragraphs 7.4 to 7.6 below evidence provided to the Reviewer or Linklaters in the course of the Review will not be provided to the BBC during the course of or following completion of the Review. The Report will, however, contain reference to and quote from such evidence as the Reviewer considers necessary for the purposes of fulfilling the Terms of Reference.
- 7.3** The BBC fully and irrevocably waives any rights as against the Reviewer or Linklaters to call for or require the delivery up of any evidence provided to the Reviewer or Linklaters under Section 4 in order to support the independence of the Review, although nothing in this paragraph 7.3 will operate so as to prevent the BBC calling for copies of any documents to which it has a legal right.
- 7.4** Notwithstanding paragraph 7.3, the BBC may make a request to the Reviewer (through Linklaters) for disclosure of such evidence, and the Reviewer will respond to any request made by the BBC reasonably and reasonably promptly. The BBC will support any such request with reasons. The Reviewer shall be entitled at their sole discretion to refuse to comply with the request, including where provision of that evidence to the BBC would:

- 7.4.1 contravene any agreement with any person providing that evidence (including agreements under paragraph 7.5 below);
- 7.4.2 breach any applicable data protection law;
- 7.4.3 potentially prejudice any police investigation; or
- 7.4.4 be otherwise unreasonable or unjust,

provided that the Reviewer shall not refuse provision to the BBC of any information if and to the extent such disclosure is required or compelled by law or other regulatory requirement, or the order of a competent court or tribunal.

- 7.5 People providing evidence to the Review may request that all, or part of, any evidence they provide to the Review is not to be shared, including with the BBC (or that it may only be shared on an anonymised basis). The Reviewer may agree to receive evidence on this basis if they consider it appropriate to do so.
- 7.6 In the event that any circumstances arise which cause the Reviewer to believe that evidence or information provided indicates the existence of a serious risk to the health, safety or welfare of any person that could be mitigated or removed by the provision of such evidence or information to the BBC, the Reviewer will provide the BBC with such evidence or information (and any further information associated with such evidence or information that the BBC reasonably requires) as soon as reasonably practicable.

#### *Privilege*

- 7.7 It may be necessary for the BBC to provide the Reviewer with records and documents from the period to which the Review relates which the BBC considers may attract legal privilege (the “**Contemporaneous Privileged Documents**”). The BBC will not withhold relevant Contemporaneous Privileged Documents from the Reviewer on the grounds of legal privilege but, for the avoidance of doubt, the provision of such material to the Reviewer is solely for the purposes of this Review, and does not constitute a more general waiver of privilege for any other purpose and/or in respect of any other documents. This applies whether or not the BBC’s legal team has had an opportunity to review any such documents before provision to the Reviewer.
- 7.8 The BBC may, at its sole discretion, choose to provide the Reviewer with documents created by the BBC following the period to which the Review relates which the BBC considers may attract legal privilege (the “**Subsequent Privileged Documents**”). The provision of such material to the Reviewer is solely for the purposes of this Review, and does not constitute a more general waiver of privilege for any other purpose and/or in respect of any other documents.
- 7.9 The Reviewer may refer to documents which the BBC considers may attract legal privilege in their report. As set out at Section 9 below, the BBC will have the opportunity to redact privileged material prior to the report being published.
- 7.10 The BBC and the Reviewer shall discuss in due course any issues that may arise, for example if the Reviewer considers that they need to share privileged documents with witnesses for the purpose of the Review.

#### *Data protection*

- 7.11 The Reviewer and Linklaters will be responsible for collecting and exercising professional judgment over the processing of any documents which contain personal data during the

course of the Review. The Reviewer and Linklaters are registered with the Information Commissioner's Office as a Data Controller.

- 7.12** Where the BBC provides documents in its possession, custody or control to Linklaters in accordance with Section 4 above, the BBC and Linklaters will each be a data controller in respect of the personal data that they contain. Both the BBC and Linklaters will comply with their obligations in this respect under the General Data Protection Regulation and the Data Protection Act 2018.

## **8 Representations Process**

- 8.1** The Review may involve the Reviewer making criticisms of individuals. Where the Reviewer is minded to criticise or set out facts / allegations adverse to individuals (including, for the avoidance of doubt, Tim Westwood), groups of individuals whose members are identifiable or organisations (including the BBC) in their Report, the Reviewer will conduct a Representations Process.
- 8.2** This will involve the Reviewer writing (through Linklaters) to such individuals, groups and organisations setting out the proposed criticism and providing them with a reasonable opportunity to make written representations in response.
- 8.3** The Reviewer will consider any such representations before concluding the Review and finalising their Report.
- 8.4** The BBC will assist the Reviewer, if requested, by ensuring that proposed criticisms are distributed in a timely fashion to any current or former employees. The Reviewer will separately provide the proposed criticism (via an encrypted method of communication) and password to the individual concerned or their legal representative if the individual requests this.
- 8.5** Where the Reviewer is minded to criticise or set out facts / allegations adverse to any other individuals, organisations or groups, they will write (through Linklaters) to those persons direct.
- 8.6** All proposed criticisms that the Reviewer is minded to make, and Representations made in response, shall remain confidential as between the Reviewer and the person to whom they are addressed, and recipients of any such proposed criticism shall be required to sign an appropriate confidentiality undertaking before being provided with the proposed criticisms. The recipient of any proposed criticisms will be permitted to share them with their legal representative. If the recipient of any proposed criticisms wishes to share these with any other person, they will be required to obtain the express written consent of the Reviewer.

## **9 BBC Review**

- 9.1** Following completion of the Representations Process set out at Section 8 above, BBC Legal will be provided with a final draft of the Reviewer's report to review for any redactions that the BBC reasonably considers necessary, including to protect:
- 9.1.1** information or documents subject to legal professional privilege; and
- 9.1.2** identifying information or personal data relating to any individual appearing in the Reviewer's report who the BBC considers should not be identified.

**9.2** Individuals who are identified or identifiable in the Reviewer's report will be provided with an opportunity to make representations as to why their identifying details should be redacted.

**9.3** The BBC will complete this review as soon as reasonably practicable and provide the Reviewer with a redacted version of the report (if any redactions are necessary) for their approval. The BBC will provide an explanation to the Reviewer of the basis on which any redactions are required.

## **10 Governance and Reporting**

**10.1** The Reviewer will provide monthly updates to BBC Legal on the status of the Review. Each such monthly update shall include a summary of the proposed work streams to take place in the Review in the month to follow and subsequently, and BBC Legal will have the opportunity to comment on these work streams prior to their commencement.

**10.2** The Reviewer will raise directly with BBC Legal any matter which they consider to be so urgent or important that it needs to be disclosed to them.

## **11 Report**

**11.1** At the conclusion of the Review, following the Representations Process and the BBC Review the Reviewer will provide their final Report to BBC Legal.

**11.2** BBC Legal will secure all necessary internal approvals to prepare for publication.

**11.3** The BBC will arrange for the Reviewer's Report to be published within a reasonable period of receiving the Report. 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 Reviewer. If it applies any such redactions, it will publish an explanation for these at the same time as publishing the Report

## **12 Interim Report**

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

## **13 Variation to Process Protocol**

**13.1** The Reviewer, Linklaters and BBC Legal may agree on variations to this Process Protocol.