

Report on Editorial Processes and Risk Management Procedures in

RTE Television Current Affairs

December 2011

Preliminary

1. On 10 November 2011 I accepted an invitation from the Director-General of RTE, Noel Curran, to carry out an independent external review of the editorial processes of RTE Current Affairs.
2. That review, while informed by the specifics of the Fr. Reynolds case, was also tasked with making recommendations, where appropriate, about relevant editorial and legal decision-making and risk management processes in relation to Current Affairs output, and in that context also to assess the adequacy of RTE's editorial guidelines and programme standards. (Appendix A)
3. As part of this review, I was given full facilities in relation to access to RTE personnel, and access to all the documentation I sought relating to the Fr. Reynolds section of the Prime Time Investigates programme and to editorial guidelines generally. All discussions with RTE staff members were on a confidential basis. It would have been impossible, without this freely given cooperation, to compile this report with the degree of urgency required.
4. The urgency of this task militated against a more detailed or root and branch review of the many areas within RTE that generate news and current affairs, or of the legal and risk management processes generally. Nonetheless, I believe that the recommendations based on the current review have in many instances a more widespread application, while their specific application and implementation remains a matter for the RTE authorities themselves.
6. While mistakes and misjudgments can never be excluded, RTE, in common with all other media organizations, has a high responsibility to ensure that mistakes and misjudgments are made only in exceptional and to all intents and purposes unavoidable circumstances. RTE, as the national public service broadcaster, has a special responsibility to ensure that all the elements involved in decision-making about programme content operate in an integrated manner to ensure the highest standards possible.
7. This is especially important in the area of investigative reporting, because the role of journalism in holding public and private institutions accountable is one of its most essential functions in a democratic society.
8. In general terms, the premise of these recommendations is that, while it is impossible to devise any system that will totally exclude the possibility of

human error, there are three key elements that should be reflected in any system that aims to reduce the possibility of human error to the maximum possible extent. These are (a) the decision-making structure and allocation of responsibilities; (b) the adequacy and timeliness of information provision within the system; and (c) the adequacy of the time available for decision-making at any given level of responsibility.

8. These recommendations are based on these key elements and are aimed at ensuring that appropriate levels of responsibility, accountability and efficiency exist within public service broadcasting as an aid, rather than a hindrance, to its exercise of the investigative reporting function. At the same time they recognise that the necessary fluidity of many journalistic processes should not be trammelled by exaggerated, unduly onerous or over-bureaucratic checks, balances or procedures.

General

Prime Time Investigates has evolved over a period of about a decade into a flagship public service broadcasting investigative documentary programme with a substantial reputation. Individual documentaries can involve a considerable period of pre-broadcast development and checking, which can take up to six months and involve substantial resource allocation. Although there is no discernible template for the programme series, it is clear that it is regularly characterised by frequent multi-level consultation, frequent interrogation of content material, and a high level of informality. The outcome of recent “Mission to Prey” programme, however, necessarily raises questions about whether the decision-making and responsibility structure within the RTE Current Affairs production and management processes involved are sufficiently developed. The possibility that the programme has, over time, outgrown its infrastructure in this regard necessitates an examination of whether the chain of responsibility is too long, whether there is an appropriate distribution of responsibility, whether there is sufficient clarity and accountability in the decision-making process, and whether the existing structure and processes can lead to an intensification of avoidable time pressures, particularly at the upper end of the responsibility chain, and therefore increase the risk of human error.

The recommendations below are therefore framed with the intention of reflecting the needs of the production and editorial process as a whole, and should not be interpreted as a commentary on the actions or decisions of any of those involved in “Mission to Prey”. They are also intended to be, insofar as this is possible, resource-neutral.

Recommendations

1. Production and editorial processes generally should take account of the possibility that, over time, documentaries of this kind have become more reporter than producer-driven. This is a positive development in that it contributes greatly to the vision, impetus and energy of the processes involved. **However, given the special requirements of long-form documentaries, a brief, informal but intensive induction process should be arranged by the Editor, Television Current Affairs, for any reporter undertaking a long-form documentary for the first time.**
2. There is also a need, in the light of the above, for a re-statement, or re-balancing, of the division of responsibilities in the editorial team generally. In particular, the integration of the producer/director with the reporter as the primary element of the production team should not be allowed to obscure one essential difference between them. **While the reporter is responsible for the collection and, insofar as this is possible, the validation of evidence, the initial responsibility for assessing the value of this evidence must remain with the producer/director. This responsibility should be clearly expressed in producer/director instructions, incorporated in guidelines as appropriate, and form part of appropriate in-service training and professional development courses.**
3. Although the present system frequently seeks advice from Legal Affairs, this needs to be placed on a more systematic basis and should be routinely triggered on a more specific basis at an earlier stage in the process. **In the interests of managing the legal risks involved effectively, the Producer/Director should therefore, no later than a month after his or her assignment to the programme, prepare a brief risk assessment document specifically covering any foreseeable risks at this stage relating to defamation and/or contempt of court, and make this available to Legal Affairs and to the Editor, Television Current Affairs.**
4. Many documentaries of this sort will involve actions that will require to be justified by considerations of the public interest, but this is nowhere defined. **A strong definition of the elements involved in any consideration of the public interest should be prepared by Legal Affairs in consultation with the Director of News for specific or general programme guidelines.**

5. Where considerations of the public interest arise or may need to be invoked, this should be considered at an appropriately early stage in the production process. **The Producer/Director should accordingly, if s/he considers that these considerations are likely to arise, prepare a brief statement justifying the programme concept and methodology under this heading reasonably soon after his assignment and make this available to the Editor, Television Current Affairs.**
6. The concept of the public interest has an application that extends far beyond the area of investigative journalism. There is also a risk that this aspect of the production process may be not be accorded sufficient priority in the inherently intense and stressful environment generated by a television production. **The Editor, Television Current Affairs, should therefore consult an independent but authoritative and senior member of the RTE programme staff, from a division other than Television Current Affairs, nominated for this purpose by the Director of News, about the considerations of the public interest advanced in relation to the proposed programme.**
7. The information flow in relation to potential legal risks should be as simple and as effective as possible. **Any written communication from the legal representatives of an actual or potential interviewee no matter to whom it is addressed, should therefore be dealt with exclusively by Legal Affairs (as is the present position in relation to News), in consultation with any member of the editorial team to whom it may have been addressed, and with the Editor, Television Current Affairs.**
8. Persons or institutions that are the subject of an investigative programme may frequently, and legally, exercise all the means at their disposal to delay or even frustrate the transmission of material they regard as unwelcome for any reason. **Despite the intensification of time pressures that this involves as transmission time approaches, every written communication from the legal representative of an interviewee or of an organisation under investigation should be referred immediately to Legal Affairs, and their opinion on it should be considered formally at a meeting restricted to the Director of News, the Head of Legal Affairs, and the Editor, Television Current Affairs prior to any final decision to authorize transmission of the programme concerned.**
9. Even though many of the issues involved may have been the subject of prior

discussions between the editorial team and Legal Affairs, and Legal Affairs may have had prior sight of a programme script, the combined and cumulative impact of sound and vision in the first or rough cut of a long-form documentary needs timely and focused examination. **Legal Affairs should therefore have sight of a draft script and, in particular, of the first or rough cut of proposed programme, sufficiently in advance of joint screening with the editorial team to enable Legal Affairs to form a considered view about the potential legal risks involved in advance of this screening and the subsequent discussion with the editorial team.**

10. The role of Legal Affairs is, and should remain, essentially advisory. Nonetheless, it may come to a conclusion in that the transmission of any particular programme or programme segment in its final form still presents a grave risk. **If it has made this clear in writing to the Director of News, the Director of News should express in writing his reasons for authorizing transmission of the material in question in writing, and these reasons, together with the risk assessment of Legal Affairs, should be made available to the Director-General for his information. The decision to authorize transmission should, however, remain with the Director of News.**
11. Door-stepping should never be seen as a routine method of adding tension or drama to an investigative documentary. **Any decision made about door-stepping interviewees should therefore be signed off formally by the Director of News, in consultation with the Editor, Television Current Affairs, and based on a written request from the Editor, Television Current Affairs, outlining the arguments for taking this step, including details of any unsuccessful prior approaches to the proposed interviewee, or justification for any decision not to make a prior approach to the individual concerned.**
12. Door-stepping, if approved, creates an entirely new situation both for the individual concerned and for the editorial team. It increases the possibility of fresh or renewed legal intervention that may raise difficulty liability issues that call the designated transmission date into question. **In spite of this, it should therefore never take place so close to the allocated transmission date that the implications of the information it has generated cannot be adequately assessed and evaluated. The Director of News should therefore be consulted by the Editor, Television Current Affairs, about the appropriate timing of any approved door-stepping.**

13. The role of the Executive Producer is a complex one, with many and varied responsibilities. It seems inappropriate, in these circumstances, to impose responsibilities in relation to programme content on individuals at this level that are more appropriately located at the level of producer/director and Editor, Television Current Affairs. **Nonetheless, this role should include an important coordinating function, to include the appropriate record-keeping in relation to all key decisions e.g. in relation to door-stepping, secret filming, and the final decisions leading to transmission, and this should be expressed in Guidelines as appropriate.**
14. Given the extent of these responsibilities, there may be a case for the creation of an Editor with specific responsibility for Prime Time Investigates, on the same level as the Executive Producer, who would work with the Executive Producer and report with the Executive Producer to the Editor, television Current Affairs. **No decision on such an appointment should be made, however, without due consideration of (a) the resource implications involved, and (b) the potential downside of inserting yet another element into the already extended chain of responsibility for programme content.**
15. Resource and personnel issues inevitably contribute to the intensification of time pressure as transmission date approaches and this, together with legal or public interests, may actually threaten transmission itself. It is assumed that in such a situation the risk of reputational damage to the station caused by the late cancellation of a programme will always be weighed carefully and in a timely fashion against the potential reputational and other damage to the station caused by the transmission of a programme that is vulnerable to challenge. A radical approach to this issue would involve re-structuring Prime Time Investigates as an occasional series without the time sensitivity currently involved. This, however, has potential drawbacks in that it creates scheduling difficulties, and also removes the appropriate and often positive pressure on journalistic professionals to create a quality product on a regular basis. **In the light of these factors, and particularly in the light of the need to ensure that appropriate time is available for all final decisions about transmission, RTE should consider (a) whether each Prime Time Investigate series should be reduced from four to three programmes, but also (b) whether the production schedule should envisage the production of four such programmes in the course of each season, to allow for the possibility, however remote, that any one programme's transmission date becomes for any reason untenable.**

16. Failures and mistakes have at least as great a potential for professional learning and development as successes. **RTE should therefore institute an occasional, randomized peer review system (including a qualified external assessor) for current affairs television programming (including news broadcasts) in which from time to time news items, packages, inserts and documentaries, selected post-transmission, can be forensically stress-tested against the standards of excellence and best professional practice expected of the station's core activities in this field.**
17. The current set of Programme Guidelines is a voluminous and unwieldy document covering every possible situation that may affect programme-making, and dates from 2008. **These Guidelines should be revised as a matter of urgency in the light of the relevant provisions of the 2009 Defamation Act and any of the recommendations above that RTE may decide to implement. Consideration should also be given, as a matter of urgency, to the earlier preparation and distribution of a shorter series of guidelines developed specifically for television current affairs in the light of recent experience and of these recommendations.**

Other recommendations

1. The recommendations above should be circulated to any other divisions in RTE to which the Board considers they may be appropriate, including those dealing with commissioned programmes, for their consideration.
2. The Board should consider the possibility of organising, following the conclusion of the Broadcasting Authority of Ireland investigation and the consideration and implementation of any changes resulting from that and the other investigations instituted in the wake of the current controversy, a public expert conference involving both print and broadcast media. This conference could have two prime objectives, among others deemed important by the Board, e.g. (a) the importance and value of investigative reporting in democratic society generally and in Ireland in particular, and (b) the appropriate parameters of best professional practice in investigative journalism, taking into account the appropriate freedom of the media, the rights of individuals, and the needs of audiences.

9 December 2011

John Horgan

Appendix 1: Terms of Reference

1. The review will be informed by the specifics of the Fr Reynolds case, but will not encompass any recommendations about individuals.
2. In this context the review will also examine and, where appropriate, make recommendations about relevant editorial decision making processes and legal vetting procedures in RTE in relation to Current Affairs output.
3. The review will examine and, where appropriate, make recommendations about the processes for the assessment of editorial risks within RTE Current Affairs.
4. The review will examine and, where appropriate, make recommendations about the processes of risk management that involve both RTE Current Affairs and RTE senior management.
5. The review will assess, in the context of risk management, the adequacy of RTE's editorial guidelines and programme standards, and the communication of those to RTE Current Affairs staff, and will make recommendations where appropriate.
6. Professor Horgan's recommendations will be made available to the RTE Board, and will also be published.