

CONSULTATION: Party Election Broadcast Allocation Complaints Process

Background

The BBC Trust proposes putting in place a new process for dealing with complaints about the allocation of party election broadcasts (referred to as PEBs in this document) to registered political parties.¹

The BBC Trust is the governing body of the BBC. It is separate and independent from the day-to-day management of the BBC. The Trust is also the final appeal body in the BBC complaints process.

The BBC is required to include PEBs in some or all of its UK Public Broadcasting Services.² The Trust is required to determine which UK Public Broadcasting Services should feature PEBs and the basis on which they should be included (the latter being referred to as PEB allocation criteria).³ The BBC Executive Board (the Executive)⁴ is responsible for determining PEB allocations in accordance with the PEB allocation criteria.

The BBC Trust will review and approve the PEB allocation criteria. Once approved, the PEB criteria are final and the BBC would not generally hear complaints about them. Consequently, they are outside the scope of this consultation. Thus, this complaints process only applies to complaints and appeals about PEB allocations and not to complaints about the criteria used to allocate PEBs.

The PEB allocation complaints process will be a procedure associated with the BBC's Complaints Framework, and will be consistent with the principles contained within it. In particular, the Complaints Framework is designed to ensure that complaints processes:

- are clear, fair, open and efficient;
- enable the public to hold the BBC to account;
- treat all parties with respect; and
- are accessible.

The BBC's complaints framework is available at the following URL:
http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/complaints_fr_work.pdf

¹ PEBs are one type of party political broadcast. Non-PEB party political broadcasts and referendum campaign broadcasts are not included in this process.

² UK Public Broadcasting Services is defined in clause 104 of the Agreement to be 'those UK public services which consist of television programme services and radio programme services'.

³ see Clause 48 of the Agreement.

⁴ The BBC Executive Board is responsible for the day-to-day operation of the BBC.

About this consultation

The proposed procedure aims to streamline processes and to improve the expediency and effectiveness of handling PEB allocation complaints, taking into account the particular requirements of these types of complaints.

The proposed complaints process brings PEB complaint handling into line with general complaints handling as set out in the BBC's complaints framework.

The proposed changes include having a clear process set out at each stage to give complainants a better understanding of how their complaint will be processed. Timeframes will be set for the notification of complaints, and for the BBC to hear these. This aims to ensure greater fairness for complainants and other affected parties taking into account the potential need to determine complaints quickly within the election period. Complainants will be required to provide detailed grounds of appeal and supporting evidence to ensure that the details of their complaints are clear and to assist the BBC to effectively consider all aspects of their complaint. Previously, these requirements were not set out as part of a formal process.

We anticipate that it will be political parties which will have the greatest interest in this complaints process and will thus have the most interest in this consultation. However, comments are invited from anyone with an interest. We are proposing that this complaints process would be restricted to registered political parties (see explanation below).

This process would not apply to editorial standards complaints in respect of PEBs. So long as it is appropriate depending on the nature of the complaint, these would normally be heard by the Trust's Editorial Standards Committee in accordance with the process for handling editorial complaints.

About the complaints process on which we are consulting

The Executive determines the PEB allocations provided to registered political parties by applying the PEB allocation criteria set by the Trust.

Under the proposed new process, which is the subject of this consultation:

- Timeframes applicable to the complaints process will be determined once an election is called and the election period is known. The process allows for complaints and appeals to be heard in reasonable timeframes taking into account the election period, which may mean that short timeframes will be applicable.
- Complaints about PEB allocation will be determined by the Executive in the first instance.
- The Executive will consider what remedies may be appropriate based on the outcome of a complaint (eg to alter the PEB allocations).
- The Trust's Editorial Standards Committee may hear appeals against the Executive's determination of complaints.

- When hearing an appeal, the Trust will determine what remedies – if any - may be appropriate. These may include requiring the Executive to reconsider its PEB allocations or to alter its approach to PEB allocations in particular or in general.
- The proposed process is only intended to be used by registered political parties (including their candidates) as they are directly affected by PEB allocations.

Further detail is contained in the complaints process included below.

Questions on which we are seeking a response

We are interested in receiving any comments which are related to this process. In particular, it would be helpful to receive responses to the following questions:

1. Is the proposed complaints process fair?
2. Is the proposed complaints process useable?
3. Is the proposed complaints process clear and does it set out all the information required?
4. Do you have other comments on the proposed process?

How to make a submission

This consultation is being run over a five week period. We hope to ensure that any process is in place ahead of the general election, which must take place by June 2010.

The closing date is:

4 December 2009

Please send your submission to: trust.consultations@bbc.co.uk

Please clearly label your email header with 'PEB Complaints Process Consultation'.

Next steps

The BBC Trust will publish the results of this consultation on the Trust website.

The PEB allocation complaints process will be finalised at the earliest opportunity with the objective that it is in place ahead of the upcoming general election, if possible.

Attachment

DRAFT FOR CONSULTATION **Party Election Broadcast Allocations Complaints Process**

The BBC is required to include party election broadcasts (referred to as PEBs in this document) in some or all of its UK Public Broadcasting Services. The BBC Trust is required to determine which UK Public Broadcasting Services should feature PEBs and the basis on which they should be included (the latter being referred to as PEB allocation criteria).⁵

The Executive has responsibility for applying the PEB allocation criteria to identify which registered political parties will be afforded a PEB and the length and frequency of such broadcasts (referred to as PEB allocation).⁶

Only registered political parties are eligible for PEBs. Who is eligible to receive a broadcast will be determined by the BBC in accordance with section 37 of the Political Parties, Elections and Referendums Act 2000.⁷

The proposed process is only intended to be used by registered political parties (including their candidates) as they are directly affected by PEB allocations.

PEB approval processes

The BBC Trust commissions the Executive to develop the PEB allocation criteria for its review and approval.

The Executive will apply the Trust approved PEB allocation criteria to determine PEB allocations. Complaints regarding allocation should be directed to the Executive in the first instance. If the complainant remains dissatisfied, the Executive's decision is subject to appeal to the Trust.

General principles for PEB allocation complaints

The Trust sets criteria for the allocation of PEBs. These criteria identify:

- a) which of the BBC's UK Public Broadcasting Services are in principle to include PEBs;
- b) the basis on which such broadcasts are to be included in the UK Public Broadcasting Services (e.g. by reference to the number of candidates fielded and past or current electoral support);

⁵ see Clause 48 of the Agreement.

⁶ This will include a reference to the relevant clause of new editorial standards protocol once this is approved.

⁷ The Political Parties, Elections and Referendums Act 2000 is available at the following URL:
http://www.england-legislation.hms0.gov.uk/acts/acts2000/ukpga_20000041_en_1

- c) the terms and conditions subject to which such broadcasts are to be included in the BBC's UK Public Broadcasting Services.

The Executive apply the allocation criteria in order to determine which registered political party will be afforded a broadcast and how many.

The BBC will require political parties who wish to complain about PEB allocations, to give notice of their complaint within set timeframes. Once an election has been called, and the election period is known, the BBC will publish timeframes for receiving complaints and appeals on the Trust website (referred to as 'relevant timeframes' in this document). Generally, appeals will need to be notified to the BBC and heard within a reasonable timeframe prior to the close of nominations.⁸ Once nominations have closed, a short timeframe may apply.

The BBC will endeavour to expedite complaints regarding PEB allocations where appropriate.

Requirements for making a PEB complaint using this process

The BBC has a standard three stage complaints process. Stage one and two complaints are heard by the Executive and stage three is an appeal to the Trust.

Complaints relating to the Executive's decision on allocation of PEBs should be directed to the Executive in the first instance. If the complainant remains dissatisfied, the Executive's decision is subject to appeal to the Trust.

This complaints process is designed to consider the complaints regarding the Executive's allocation decision from any aggrieved or adversely affected entity (generally such entities will be registered political parties).

Complaints may not be accepted for consideration if:

- They are vexatious or trivial;
- They do not raise a matter of substance;
- It would not be appropriate, proportionate or cost effective to hear the complaint;
- They are relevant to matters which are the subject of, or likely to be the subject of, or relevant to, legal proceedings;
- They relate to matters which have already been adjudicated upon by the Trust or a Trust committee;
- It would be otherwise inappropriate for the BBC to consider the complaint.

If a large number of complainants complain about a specific action, the BBC's Executive may compile a summary of the range of issues raised by the

⁸ PEB allocations are confirmed on the calling of the election, subject to confirmation of achieving requisite candidate qualification one day after the close of nominations.

complaints. The complaints will then be considered together across the full range of issues identified.

Likewise if a large number of complainants appeal against a specific decision by the Executive, the Trust may compile a summary of the range of issues raised by the complaints. The appeals will then be considered together across the full range of issues identified.

At each stage, complainants must set out in writing the grounds on which their complaint or appeal is based. This statement should ordinarily be limited to 1000 words. Where a complaint relates to disputes about levels of electoral support, complainants are required to provide relevant evidence. The BBC may require complainants to provide additional information.

Making a complaint about Party Election Broadcasts (stage 1)

Initial complaints should be directed to the Chief Adviser, Politics, including the grounds as set out above. The response will be provided in a reasonable timeframe taking into account the election period, which may mean a short timeframe is required.

Please contact:

Chief Adviser, Politics

[Contact details (inc email) to be included in due course]

Your complaint should be in writing and submitted by email, if possible. A certain level of detail is required to enable complaints to be heard. If you are unable to provide a written document, or have other access issues, please contact [details] for help and advice on how to submit your appeal.

To enable the Executive to consider your complaint, you should include the following information:

- Full details of your complaint;
- Any relevant supporting evidence. Specifically, if claims about the level of electoral support are relevant to your appeal, you should include supporting evidence.

You will receive a written response acknowledging receipt of your complaint. In the first instance, the BBC's Chief Adviser, Politics will consider your complaint. You may be contacted at this stage with queries or an initial view on your complaint. Additional information may be required from you.

You will receive a written acknowledgement of your complaint which will explain the process and relevant timescales.

Following the determination of your complaint, the Executive will provide you with a written response setting out the reasons for its finding.

Appealing stage 1 complaint determinations (stage 2)

Any appeal against the response of the Chief Adviser, Politics should be made to the Deputy Director-General, including any new relevant evidence.

As with stage one, your complaint should be in writing and submitted by email, if possible.

To enable the BBC to consider your stage 2 appeal, you should include the following information:

- Full details of your complaint including details of your correspondence with the Executive at stage 1 of your complaint;
- The reasons you are dissatisfied with the response of the Chief Adviser, Politics; and
- Any relevant supporting evidence. Specifically, if claims about the level of electoral support are relevant to your appeal, you should include supporting evidence.

You will receive a written response acknowledging receipt of your appeal. The Deputy Director-General will consider your complaint. You may be contacted at this stage with queries or an initial view on your complaint. Additional information may be required from you.

You will receive a written acknowledgement of your complaint which will explain the process and relevant timescales.

Following the determination of your appeal, the BBC will provide you with a written response setting out the reasons for its finding.

This response will also be provided in a reasonable timeframe taking into account the election period, which may mean a short timeframe is required.

Appealing stage 2 complaint determinations (stage 3)

If you wish to appeal against the Executive's determination of your PEB complaint, you may appeal to the Trust. Please contact:

Complaints Manager
BBC Trust

[Contact details (inc email) to be included in due course]

The appeal request should be in writing. A certain level of detail is required to enable appeals to be heard. If you are unable to provide a written document, or

have other access issues, please contact the BBC Trust information line on 03700 103 100/ textphone 03700 100 212 for help and advice on how to submit your appeal.

To enable the Trust to consider your appeal, you should include the following information:

- Full details of your appeal, including details of your correspondence with the BBC Executive and your stage one and two appeals.
- The reasons you are dissatisfied with the responses of the Executive.
- Details of your grounds of appeal and any relevant supporting evidence. Specifically, if claims about the level of electoral support are relevant to your appeal, you should include supporting evidence.

You will receive a written response acknowledging receipt of your appeal. In the first instance, the BBC Trust's Head of Editorial Standards will consider your appeal against the requirements for bringing an appeal. You may be contacted at this stage with queries or an initial view on your appeal. Additional information may be required from you to enable the Trust to decide if it will hear your appeal. The Trust is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not.

If your complaint qualifies for an appeal it will be heard by the Trust's Editorial Standards Committee (ESC). However, at the Trust's discretion, the Trust may consider an alternative process where necessary. A letter will be sent to you confirming whether your appeal will be heard. This letter will explain the process and relevant timescales for the handling of your appeal.

Following the determination of your appeal, the Trust will provide you with a written determination setting out the reasons for its finding. If your appeal is upheld, the response will outline the remedy (if any) that the Trust will require of the Executive.

This may include:

- Requiring the Executive to reconsider its PEB allocations
- Requiring the Executive to alter its approach to PEB allocations in that instance and/ or on an ongoing basis.

Details of determined appeals will be published on the Trust website unless this would be inappropriate (eg to protect the privacy of an individual).