

Editorial Standards Findings: Appeals and other editorial issues to the Trust considered by the Editorial Standards Committee

Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

The Committee comprises six Trustees: Richard Tait (Chairman), Chitra Bharucha, Mehmuda Mian, David Liddiment, Alison Hastings and Anthony Fry. It is advised and supported by the Trust Unit.

In line with the ESC's responsibility for monitoring the effectiveness of handling editorial complaints by BBC management, the Committee considers appeals against the decisions and actions of the BBC's Editorial Complaints Unit (ECU) or of a BBC Director with responsibility for the BBC's output (if the editorial complaint falls outside the remit of the ECU).

The Committee will consider appeals concerning complaints which allege that:

- the complainant has suffered unfair treatment either in a transmitted programme or item, or in the process of making the programme or item
- the complainant's privacy has been unjustifiably infringed, either in a transmitted programme or item, or in the process of making the programme or item
- there has otherwise been a failure to observe required editorial standards

The Committee will aim to reach a final decision on an appeal within 16 weeks of receiving the request.

The findings for all appeals accepted by the Committee are reported in this bulletin, *Editorial Complaints: Appeals to the Trust*.

As set out in its Terms of Reference, the Committee can decline to consider an appeal which in its opinion:

- is vexatious or trivial;
- does not raise a matter of substance;
- relates to the content of a programme or item which has not yet been broadcast;
- concerns issues of bias by omission in BBC news programmes unless the Chairman believes that it is plausible that the omission of an item could have led to a breach of the guidelines on impartiality;
- has not been made within four weeks of the final correspondence with the ECU or BBC Director on the original complaint; and
- relates to matters which are the subject of or likely to be the subject of, or relevant to, legal proceedings.

The Committee will not generally reconsider any aspects of complaints that have already been adjudicated upon or considered by a Court.

Any appeals that the Committee has declined to consider under the above criteria are reported in the bulletin.

In line with its duty to consider topics of editorial concern to the Committee, whether or not such concern arises from a formal complaint, and to commission information requests from the Trust Unit or Executive to support such consideration, the Committee also from time to time requests the Executive to report to the Committee regarding breaches which have been accepted by the Executive and are therefore not subject to appeal to the Committee. The bulletin also may contain findings relating to such cases.

The bulletin also includes any remedial action/s directed by the Committee.

It is published at bbc.co.uk/bbctrust or is available from:

The Secretary, Editorial Standards Committee
BBC Trust Unit
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Summary of findings

Panorama: Terror in the Skies?, BBC One, 9 September 2008

***This appeal was heard in June and the decision ratified in July. Publication of the Editorial Standards Committee's finding was delayed pending the resolution of a related court case.**

The complainant felt that the programme was misleading and biased. He argued that by leaving out certain information and failing to question some of the prosecution's evidence, the programme gave the impression that there had been a serious plot to blow up airliners even though this was unproven; and that a particular individual, Rashid Rauf, was involved in this plot even though terrorist charges against him had been dropped in Pakistan.

The Committee concluded:

Accuracy

- that the coverage and presentation of evidence from the court case had been careful and accurate.
- that the references to the original case concerning the murder of Rashid Rauf's uncle had been justified as this was an important and relevant part of Rauf's history.
- that it was not necessary for the programme to mention Rauf's acquittal of local Pakistan-based terror charges as this was not relevant to the airline plot.
- that comments in the programme which speculated on Rauf's involvement in the bomb plot had been well sourced and based on attributed opinions.
- that the programme had met the editorial guideline requirements for due accuracy.

Impartiality

- that the programme had shown sufficient openness and even handedness, given the facts that were known, of the case concerning Rashid Rauf.
- that due impartiality does not require every argument or every facet of an argument to be presented on every occasion, and that this was relevant to the dropped charges in Pakistan as the charges of the Pakistani authorities had no direct relationship with the subject of the programme (the airline bomb plot).

The complaint was not upheld.

For the finding in full see pages 11 to 20.

5 Live Breakfast, Radio 5 Live, 1 October 2008

The complainant found it “incredible” that in an item discussing a decision by Sainsbury’s to ban the use of plastic bags from its checkouts the two guests interviewed were in support of the ban with no voice raised against the policy. The complainant believed this was not the normal way in which controversial issues were dealt with on Radio 5 Live and requested that another discussion on the subject be broadcast where the opposite view on the use of plastic bags would be presented.

The Editorial Standards Committee considered the broadcast against the guidelines on impartiality and diversity of opinion.

The Committee concluded:

- that the provision of plastic bags by supermarkets did not fall into the category of highly controversial issues and there was no requirement to provide balancing views within the same item.
- that the issue could be considered to be controversial, which would require balance to be achieved over time.
- that there was no requirement to consider every issue relating to plastic bags on every occasion.
- that the presenter had tested the contributors and challenged the guests a number of times, and had put forward an alternative view in the absence of a contributor to do so.
- that the programme had been fair and open-minded in its approach to the item and had not breached the impartiality guidelines.

The complaint was not upheld.

For the finding in full see pages 21 to 28.

My Penis and Everyone Else’s, BBC Three, 3 September 2007

Elements of this complaint were rejected by the Editorial Standards Committee in 2008.

The complainant’s concern that the display of male genitalia in this programme breached the guidelines on harm and offence, was considered on appeal by the Trust. The complainant alleges that the timing of this programme was inappropriate as it could have been seen by children. The complainant also alleges that the display of penises in the programme was gratuitous and the time spent showing penises was excessive.

The Editorial Standards Committee considered the programme against the BBC guidelines on Harm and Offence.

The Committee concluded:

- that, while the programme had contained what some of the audience would have considered challenging material, there was a clear editorial purpose for it.
- that adequate steps had been taken to signpost the adult subject matter, including the title of the programme itself and the pre-transmission announcement.
- that the channel on which the programme was broadcast, BBC Three, appeals to young adult viewers and as such there is an expectation that it will provide challenging material.
- that the content was in keeping with previous programmes in the Body Image series, broadcast in the same 21.00 – 22.00 timeslot.
- that the content of the programme would not have taken the audience by surprise and that viewers who found the subject matter concerning would have had ample opportunity to avoid the content, given the clear signposting that had been given.
- that the programme had been broadcast after the 21.00 watershed and therefore parents were expected to share the responsibility for assessing the suitability of the content for their children.
- that the more explicit images and discussion had not occurred until the second half of the programme, giving parents sufficient time to evaluate the suitability of the programme for their children.
- that the programme had been scheduled appropriately.
- that the approach and content of the programme had been editorially justified given the serious issues identified.
- that the subject was treated with appropriate sensitivity, with the depiction of real penises limited to photographic images of flaccid penises occurring 30 minutes after the watershed.

The complaint was not upheld.

For the finding in full see pages 29 to 37.

Panorama: Comeback Coal, BBC One, 1 December 2008

The complainant believed the programme had seriously misled viewers by using pictures of cooling towers alongside a commentary about the rise of carbon dioxide emissions and their contribution to global warming. The complainant pointed out that cooling towers emitted harmless water vapour and were therefore not the cause of pollution as was suggested by their use within the programme.

The Committee concluded:

Accuracy

- that it accepted the inherent challenge to programme makers of

illustrating carbon dioxide, an invisible gas.

- that, notwithstanding the problem of depicting an invisible gas, it was confusing to viewers to use pictures of cooling towers emitting water vapour alongside a commentary which refers to carbon dioxide.
- that, while the sequence specifically complained about contained a montage of different shots, the overall impression was that pollution was being emitted from the towers.
- that, whether or not the towers which were shown were part of a power station burning fossil fuel, the images of the cooling towers when associated with comments regarding greenhouse gas emissions had been inaccurate.
- that the clear guidance which had already been issued to specialist science correspondents and output editors in the newsroom should be shared with all factual programming areas to ensure that the inaccurate use of cooling tower footage was not repeated.

The complaint was upheld.

For the finding in full see pages 38 to 43.

Panorama: Comeback Coal, BBC One, 1 December 2008

The complainant alleged that this edition of Panorama was biased in two ways: it had not included a representative selection of interviewees expressing local opposition to opencast mining and the full scale of problems encountered by local residents had not been reflected. The complainant also stated that she had been denied access to information prior to transmission of the programme which would have enabled her to take out an injunction before the broadcast. In addition, the complainant said that it was unacceptable that it had taken three and a half months for the Director-General's office to respond to her letter.

The Committee concluded:

Impartiality

- that the editorial guidelines' requirement for due impartiality does not stipulate that every argument or every facet of an argument is included on every occasion.
- that the two interviewees in the programme who had expressed opposition to the mine had done so forcefully and eloquently.
- that the selection of interviewees had provided an appropriate voice and representation from the local community and had avoided bias or an imbalance of views in the programme.
- that, as Ffos-y-Fran was one of four case studies in the programme, (which was not solely concerned with this specific opencast mine) an appropriate amount of detail regarding the complaints expressed by the local community of Merthyr Tydfil had been included within the

programme to show the level of concern and opposition to the mine to the viewing audience.

Access to material pre-transmission

- that there was no editorial guideline requiring the provision of material to members of the public on request pre-broadcast.
- that the complainant's appeal in relation to the BBC Executive's refusal to disclose information prior to the broadcast did not raise a case for the Executive to answer.

Complaint handling

- that the complainant's first letter to the Director-General had received a response within the target time of 10 working days.
- that there had been a period of six weeks before the response to the complainant's second letter to the Director-General's office.
- that this time coincided not only with the Christmas period but also with a greatly increased level of correspondence generated by the Russell Brand complaints.
- that, once the letter had come to the attention of BBC Information, it had received a response on the same day.
- that, while the delay was regrettable, there were mitigating circumstances regarding the lateness of the second reply.

The complaint was not upheld.

For the finding in full see pages 44 to 51.

“London summit on Jewish refugees”, BBC News Online

The initial complaint related to a statement that Jews had been fully integrated into Arab societies prior to the establishment of Israel. The complainant believed that this statement was inaccurate. Following the complaint the article was amended. The complainant considered that the amendment was not adequate in that it downplayed the suffering of Jews in Arab countries, that the article was inaccurate and that the BBC treated Jewish and Arab refugees differently.

The Committee concluded:

- that whilst the subject of the article related to a significant historic event, the story itself was pegged to a specific news event, the first London conference of Justice for Jews.
- that it was appropriate for the article to focus on the news event without reflecting the complexities of the issue in the detail that a longer item, or an item of a different nature, would have done.
- that it was satisfied that the article had fairly and accurately reflected the

Justice for Jews position on the subject of Jewish refugees.

- that, while no detail was given in the article about the extent or nature of the suffering experienced by Jews, it was not necessary in the context of this short article in order to achieve due accuracy and impartiality.
- that the author of the article was justified in commenting that the subject of the number of Jewish refugees from Arab countries and the conditions under which they left is controversial.
- that the article itself did not question the description of the Jews who left Arab countries as refugees, and that the complainant's objection related to correspondence received at an earlier stage of the complaint.
- that it was the Committee's remit to consider the article as published and therefore that there was nothing to test against the guidelines in relation to the use of the term "refugees".
- that the article under consideration was a specific news item about a specific event and that it would not be appropriate or relevant to assess it alongside the entire BBC coverage of the Palestinian refugee issue.
- that the content of the article reflected the story with due accuracy, gave due prominence to the Justice for Jews campaign and fairly represented the degree of controversy surrounding the issue.
- that the balancing comments contained in the article, which placed the campaign in its wider context, were appropriate.

The complaint was not upheld.

For the finding in full please see pages 52 to 59.

Findings

Panorama: Terror in the Skies?, BBC One, 9 September 2008

***This appeal was heard in June and the decision ratified in July. Publication of the Editorial Standards Committee's finding was delayed pending the resolution of a related court case.**

1. The programme

This edition of Panorama examined the trial of those accused of a terrorist plot to blow up transatlantic airliners.

2. The complaint

The complainant initially complained to BBC Information on 12 September 2008. In his email to the BBC the complainant said he believed the presenter had “seemed to accept everything he was fed by the security services”. In particular he stated that the programme had suggested that Rashid Rauf, was allowed to escape in Pakistan but did not report that all terrorism charges against him had already been dropped by the Pakistani authorities. The complainant also stated that the British authorities knew that none of the conspirators had bought air tickets but did not explain how this squared with placing Heathrow on the highest security alert. The complainant also said that the programme failed to tell viewers when reconstructions were verbatim and when they were just a general impression of what the security agencies claimed had happened.

The complainant sent a follow-up letter on 4 October chasing a reply to his initial email.

BBC Information replied on 8 October 2008 apologising for the delay. The reply also contained comments from the reporter of the Panorama programme to the criticisms raised by the complainant. The reply pointed out that the jury in the trial had been unable to reach a verdict on whether the plotters were targeting aircraft and that there was going to be a retrial. The response also clarified that the programme had not suggested that Rashid Rauf had been “allowed to escape” but that he “ran out of the back door of the mosque”. It also noted that the terrorism charges against Rashid Rauf in Pakistan, which were dropped, had nothing to do with the alleged airline plot in the UK; that the evidence presented in the programme was how it had been presented in court and that it had been made clear when it was the “police view” or “prosecution view”. The reply noted it had never been implied that the views expressed had been those of Panorama.

The programme response also noted that the reconstructions reflected what was said in court, and were labelled as such. As to the issue of Heathrow, the reporter noted that it had been the police that had placed the airport on alert because of

intelligence that a dummy run was planned by one of the accused and that this had nothing to do with the buying of tickets.

The reply also stated that the programme was factual and non-judgmental. It also defended the programme's broadcast stating that there was a public interest due to the widespread level of concern about the case.

On 9 October 2008 the complainant replied questioning why the suspicion that Rashid Rauf had murdered his uncle had been mixed up with the bomb plot. The complainant also wondered why the programme had stated that Rashid Rauf was linked to Al-Qaeda, when a senior ex-army intelligence officer (Nigel Wylde) was convinced the airline plot was fiction. The complainant also noted that he had not been able to check the programme content because it was unavailable on line. However, he considered that the programme had accepted the prosecution's case and that in the "interests of justice", before the retrial, there should be another Panorama putting forward the defence's view.

BBC Information replied on 28 October 2008 stating there was little they could add to their previous reply.

The complainant then emailed the Editorial Complaints Unit (ECU) (stage 2 of the BBC complaints process) on 29 October 2008 suggesting that the programme could have prejudiced a retrial and reiterating the point that there should have been a Panorama film giving the defence's view.

Following an exchange of correspondence the ECU replied to the complainant with its finding on 11 December 2008. The ECU noted that Panorama had presented Rashid Rauf's escape in Pakistan as incompetence rather than deliberate. It also noted that whilst the programme did not state that terrorism charges had been dropped against Rashid Rauf, the omission had not misled the audience because Rashid Rauf had been mentioned by numerous intelligence sources as integral to the bomb plot in the UK.

As to the issue of the high security alert at Heathrow, the ECU noted that the programme had explained on more than one occasion that no tickets had been bought and that there was confusion over what precisely was being planned by the bomb-makers. The ECU noted that the programme had accurately reported that the authorities were not prepared to take the risk that a "dummy run" might turn out to be a genuine attack. In relation to the programme's inclusion of references to the murder of Rashid Rauf's uncle, the ECU noted that it was following the murder of Rashid Rauf's uncle that the police first became aware of Rashid Rauf and, while Pakistan had dismissed a variety of terrorism charges against Rashid Rauf, the British and US intelligence sources believed he was involved in the bomb plot. As such, the ECU did not feel that the omission regarding the Pakistan authorities was misleading.

With regard to the complainant's view that the programme had presented only the police or prosecutor's view, the ECU was satisfied that the programme had met the impartiality requirement by explaining where the jury had been unable to reach

agreement. It had also broadcast a summary of the defence offered by Rashid Rauf at the end of the programme. The ECU also felt it reasonable for an investigative current affairs programme like Panorama to report on the background to one of the biggest “terrorism” trials in recent history.

As to whether the programme was based on the premise that there was a plot to blow up planes, the ECU noted that the programme accurately reported the fact that the jury was unable to reach a verdict. It also noted that the question mark in the programme title made it clear that the plot was open to doubt. The ECU also noted that, while the complainant believed the views of an intelligence expert who dismissed the bomb plot as fiction should have been reflected in the programme, the choice of contributors was a matter of editorial judgment. The ECU also noted that the programme believed the intelligence expert suggested by the complainant may not have been expert in the current nature of the terrorist threat.

The complainant replied on 17 December 2008 reiterating his concerns. He also stated that he felt the view of the Pakistani authorities was crucial to viewers’ understanding, pointing out that it was the arrest of Rashid Rauf in Pakistan which triggered the panic in Heathrow. The complainant also disagreed with the ECU’s view of the level of understanding of the former intelligence expert.

In reply the ECU stated in an email dated 22 December 2008 that the programme had made it clear that when Rashid Rauf escaped he was still regarded as a wanted man by British and US intelligence; that the programme had accurately presented the jury’s verdict on the particular charge of conspiring to blow up planes; and that, while the complainant doubted whether the bomb plot could have been carried out, the programme had found sufficient support from scientists who believed the plot was plausible.

The complainant appealed to the ESC on 24 December 2008 re-emphasising the about-face of the Pakistani authorities over Rashid Rauf’s involvement in a terror plot and the complainant’s suggestion that, by not mentioning this, the programme gave a distorted view of the case against Rauf.

3. Applicable editorial guidelines

Section 3 – Accuracy

Introduction

The BBC’s commitment to accuracy is a core editorial value and fundamental to our reputation. Our output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don’t know and avoid unfounded speculation.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve accuracy by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

Misleading audiences

We should not distort known facts, present invented material as fact, or knowingly do anything to mislead our audiences. We may need to label material to avoid doing so.

Section 4 – Impartiality and Diversity of Opinion

Introduction

Impartiality lies at the heart of the BBC's commitment to its audiences. It applies across all of our services and output, whatever the format, from radio news bulletins via our web sites to our commercial magazines and includes a commitment to reflecting a diversity of opinion.

- we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.
- we must ensure we avoid bias or an imbalance of views on controversial subjects.
- the approach to, and tone of, BBC stories must always reflect our editorial values. Presenters, reporters and correspondents are the public face and voice of the BBC, they can have a significant impact on the perceptions of our impartiality.

Achieving Impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to our audiences.

Impartiality is described in the Agreement accompanying the BBC's Charter as "due impartiality". It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and subsequent submissions from the complainant.

This appeal raised issues requiring consideration of the editorial guidelines relating to accuracy and impartiality.

The Committee did not consider the complaint against the guideline on fairness as the consideration of unfair treatment applies only to complaints made by those who have directly featured or participated in a BBC programme or have been personally involved in the making of a programme.

The Committee noted that the programme was transmitted the day after the court's verdict and the day before a retrial was ordered. It was produced by an experienced team and legal advice was taken throughout the process. The Committee therefore recognised that although the programme was transmitted very soon after the verdicts, it was not rushed in its production.

The Committee also noted that the complainant's letter to the Trust focused on only one point of his previous complaint to the BBC: that of the role of Rashid Rauf in the alleged "plot" and in the programme. The complainant said the main thrust of his complaint was:

"Since the British authorities claimed in August 2006 that it was information gained from the arrest of Rashid Rauf in Pakistan which instigated the highest level of security measures at Heathrow, the complete volte-face by the Pakistani authorities over his involvement in a terror plot is absolutely crucial. After several months in custody, when they crawled all over his home and software, all terrorism charges against him were dropped in December 2006.

For Panorama not even to mention this gives a distorted view of the case against him. What British and American intelligence agencies were saying in public is completely at odds with the failure of Pakistan to uncover any evidence."

The Committee noted the programme's references to Rashid Rauf.

The Committee noted that the story as to why Rashid Rauf was thought to have left Birmingham for Pakistan was included at the beginning of the programme: it was alleged he had been implicated in the murder of his uncle.

Commentary (Com):

The story of the so-called Airlines Plot has an unlikely beginning – with a murder on a lonely street in Birmingham in the early hours of the morning. (Programme emphasis)

Mohammed Saeed, a 54 year old delivery driver, was returning home after dropping off vegetables he'd bought from a market down south.

Com:

It's thought that two men in a Nissan car were waiting for him to return.

Com:

As Saeed got out of his car, he was attacked, pushed against the bonnet and stabbed five times.

He staggered to the door of his terraced house and collapsed on the pathway.

His family tried to resuscitate him but it was too late.

When the police arrived on the scene, they found there were no eye-witnesses to the attack.

Com:

Detectives concluded it was the result of a family dispute. The main suspect was the nephew of the dead man, Rashid Rauf.

Family member:

Rashid Rauf was a very polite little boy and I always find him a polite boy and a good boy – and I think they're very good family and very peaceful family and they don't do anything wrong.

Com:

Two weeks later, Rashid Rauf fled to Pakistan.

Later in the programme, there was another reference in the script to Rashid Rauf:

Com:

The Americans believe the key figure connecting Pakistan with the cell in the UK was Rashid Rauf.

Michael Chertoff (MC):

Well there was a connection to a particular individual, Rauf, who is part of this network, and I think that plus some other things which I won't get into lead me to be quite convinced this is linked to the network, the Al-Qaeda network.

Presenter:

And what was Rauf's connection with the network believed to have been?

MC:

I think probably now we're getting into an area that, that's sufficiently close to matters which are classified that I'm not going to be able to get into.

Com:

So the police theory ran that the plot was instigated in Pakistan and channelled through Rashid Rauf to the cell in the UK.

Then:

Com:

Early that Wednesday evening, phone calls and texts were winging their way between Walthamstow and Pakistan – and vice versa. One text to Ali appeared to make a coded reference to Hydrogen Peroxide.

Com:

The person who sent it was believed to be Rashid Rauf who'd fled to Pakistan after the murder of his uncle in Birmingham.

Text message:

How much stock has cm g bought. Need him to get as much as possible.

And:

Com:

A startling piece of news suddenly came out of the blue. Rashid Rauf had been arrested in Pakistan. The fear was that once word reached the cell through the mobile phone bush telegraph, the plotters would go to ground and destroy the evidence.

Com:

There've since been conspiracy theories that President Bush ordered Rauf's arrest to speed up the British response, fearing that an airline plot would mark the end of his Presidency as 9/11 had marked the beginning.

And:

Com:

The CIA became worried when Rauf was tracked travelling to the town of Multan – a wellknown route to Pakistan's Tribal Areas and Afghanistan.

MC:

If they're going to disappear or we're going to, they're going to enter into an area where our ability to surveil them and apprehend them is going to become compromised, then yeah you have to move before you lose the opportunity to catch the person.

Presenter:

So would one of your agencies like the CIA have warned the Pakistani intelligence agency, the ISI, that they'd better move and arrest Rauf now before he disappeared?

MC:

If we had any reason to believe that someone might disappear we'd obviously want to give a heads-up so to speak to our partners.

And finally, after one other short aside:

Com:

Our story began with the murder in Birmingham. But what happened to the prime suspect in that murder, Rashid Rauf, after he'd been arrested in Pakistan?

Presenter:

It's an astonishing story – just like something out of the Keystone Cops.

I've seen an internal US intelligence document that explains what happened.

It says Rauf was returning to prison after appearing in court, accompanied by a police escort and his uncle.

They stopped off at this McDonald's drive in for a break and then they moved on to this mosque where Rauf was allowed inside to say his prayers. He then ran out of the back door and disappeared.

The document concludes that Rauf at large remains a threat to Pakistan – and Britain.

Presenter:

Is Rauf at large a threat?

MC:

I'd say yes, sure. You have an individual involved, who was involved in planning a terrorist act. At a minimum they carry with them the expertise that they had at the time we arrested them.

Presenter:

What was your reaction when you heard that Rashid Rauf had escaped?

Philip Mudd (PM):

Anger and disappointment.

Presenter:

And escaped in the way that he did, he ran out of the back of a mosque.

PM:

Anger and disappointment.

Presenter:

Surprise?

PM:

I can't say I was surprised.

I have no doubt that Rashid Rauf will be caught again and I look forward to that day. I was angry and disappointed. He will go down. I hope he's watching!

The Committee noted that the programme had not told any of the rest of the story of Rashid Rauf – and that it was in itself a complex one, still moving at the time the programme was transmitted and ever since. The Committee noted that Rashid Rauf was arrested in August 2006 in Pakistan on suspected terrorism charges. In December 2006 the terrorism charges were dropped but charges of possessing explosives and carrying forged ID papers remained. These charges were subsequently dropped in November 2007 but Rashid Rauf was retained in custody facing possible extradition to the UK on the matter of his uncle's death. It was on the way from this last hearing that Rashid Rauf apparently escaped. He was then said to have been killed in November 2008 in American raids on a Taliban safe house in North West Pakistan but no body was recovered. Most recently, in April 2009 there were reports that, far from being dead, Rashid Rauf was leading Al-Qaeda in planning attacks on the west.

The Committee concluded that, with regard to accuracy, it was satisfied that the coverage and presentation of evidence from the court case had been careful and accurate.

As to references to the original case in Birmingham concerning the murder of Rashid Rauf's uncle, the Committee concluded that it was an important and relevant part of Rashid Rauf's history to refer to this incident, in that it was the issue that alerted the police to Rashid Rauf and apparently led to him leaving the United Kingdom for Pakistan.

With regard to whether the programme should have included information as to Rashid Rauf's acquittal of local Pakistan-based terrorist charges, the Committee was satisfied that it was not relevant to refer to these charges as they were not related to the alleged airline plot. As to the speculation concerning Rashid Rauf's involvement in the alleged bomb plot the Committee was satisfied that these had been carefully sourced and attributed. The Committee noted in particular the comments made by Michael Chertoff and Philip Mudd which it recognised were the American and British intelligence versions of events.

The Committee was therefore satisfied that, in the presentation of information concerning Rashid Rauf's alleged involvement in the bomb plot, the evidence had been well sourced and based on appropriately attributed opinions. As such, the Committee was satisfied that the programme had met the requirements of the BBC editorial standards concerning accuracy.

With regard to whether the references to Rashid Rauf had been duly impartial, the Committee noted how the programme had referred to his involvement in the alleged bomb plot.

The Committee noted that the title of the programme indicated the stance of the programme – that is was exploring the concept that a plot existed to bomb airlines but that the plot was not confirmed. That applied to the alleged role of Rashid Rauf.

The Committee noted that in the commentary concerning the murder of Mohammed Saeed, Rashid Rauf's uncle, the programme had reported the facts and the police's conclusion that Rashid Rauf was in some way implicated in the murder. This reference was also balanced with the inclusion of a description of Rashid Rauf by a family member:

Com:

Detectives concluded it was the result of a family dispute. The main suspect was the nephew of the dead man, Rashid Rauf.

Family member:

Rashid Rauf was a very polite little boy and I always find him a polite boy and a good boy – and I think they're very good family and very peaceful family and they don't do anything wrong.

The Committee also noted that the programme had, given the sensitivity of the information being shared by the intelligence agencies, been careful not to present it as fact. The Committee noted how the commentary referred to a text message allegedly sent by Rashid Rauf to one of the accused:

Com:

The person who sent it was believed to be [our emphasis] Rashid Rauf who'd fled to Pakistan after the murder of his uncle in Birmingham.

Text message:

How much stock has cm g bought. Need him to get as much as possible.

The Committee was therefore satisfied that the programme had shown sufficient openness and even handedness, given the facts that were known, of the case concerning Rashid Rauf. The Committee was also satisfied that due impartiality did not require the programme to have referred to the dropped charges in Pakistan as the guideline did not require for every argument or every facet of every argument to be presented. This was especially relevant as the charges of the Pakistani authorities had no direct relationship with the subject of the programme – the alleged airlines bomb plot.

The Committee therefore concluded that the programme's treatment of the role of Rashid Rauf was both accurate and duly impartial.

Finding: Not upheld

5 Live Breakfast, Radio 5 Live, 1 October 2008

1. Background

This edition of 5 Live Breakfast included an item about Sainsbury's removing plastic bags from its checkouts. The programme invited contributions from two guests, one from the town of Modbury where a ban had already been imposed and the other from the trade magazine PR Week, both spoke in favour of banning plastic bags.

2. The complaint

The complainant initially contacted BBC Information on 1 October 2008 stating that normally Radio 5 Live debated a subject impartially by including one guest in favour and one guest against. However, on this particular morning the complainant heard "not one but two guests" supporting the abolition of plastic carrier bags. The complainant added:

"[...] they were not even challenged by the interviewer who meandered along asking a series of lame questions as if this was some fun subject. It is not! Thousands of jobs are at stake."

The complainant pointed out that the Scottish Parliament had spent two years and two million pounds researching this subject and concluded that there would be no environmental benefit to banning bags. The complainant asked for a commitment that two informed people would now be invited onto Breakfast to speak about the benefits of plastic bags.

BBC Information wrote back on 10 October 2008 stating that the programme aimed to represent a broad range of views but could not do this every day. It added:

"It [the programme] seeks to achieve balance over a reasonable period and has a firm commitment to political balance over the programme as a whole. This provides some scope for different balance from one day to another, and also for introducing variety in the guests who appear."

The complainant replied on 12 October 2008 asking how "balance over a reasonable period" would be achieved in relation to the plastic bags issue.

On 23 December 2008 BBC Information replied apologising for the delay to their reply. The reply explained that the editor of Breakfast had not intended the discussion to be about the rights and wrongs of the ban. Instead, they had planned to have a discussion on whether Sainsbury's decision was little more than a PR gesture. The reply noted that:

"The programme's editor does agree that they could have done more to make sure the presenter reflected the views of those who are against a ban during the programme and feels that you make an interesting point about the

wider debate and tells me they will bear that in mind when the issue comes up again.”

The complainant wrote to the Editorial Complaints Unit (ECU) (stage 2 of the BBC’s complaints process) on 14 January 2009. He said he was not satisfied with BBC Information’s reply. He complained that:

“To have had only one side of the argument represented was totally unacceptable. To have had TWO people on to represent that one side was unforgivable.” (Complainant’s emphasis)

The complainant stated that he could put the programme in touch with people who could represent the environmental arguments in favour of plastic bags and said that he hoped Breakfast would soon “correct the blatant wrong which has taken place”.

In a further email to the ECU in which the complainant had been asked to comment on the summary of the complaint set out by the ECU, he stated:

“The Breakfast programme about which I complained treated this subject as something of a ‘jolly’ about an attempt to ban plastic bags from an area. It is no such thing! It is a serious matter and ill informed programmes like this one could cost thousands of British jobs – with no environmental benefit whatsoever.”

The complainant also repeated his question as to how balance had been or would be achieved in relation to this issue.

The ECU replied on 16 February 2009. The reply included comments by the editor of Breakfast who repeated the point that the programme was trying to assess the PR and marketing impact of the move by stores to stop using plastic bags rather than a discussion on whether plastic bags should be banned or not. The reply from the editor pointed out that the guest from Modbury was there to describe how the ban had worked and the PR guest was there to consider the marketing impact but, instead, had come across as a keen advocate of the ban. The editor also repeated that the presenter could have done more to put the view that some people were opposed to the ban and that they would bear in mind the arguments against a ban when doing future items.

The ECU reply also noted that it was a matter of regret that the PR guest chose to engage the topic from a personal perspective. The ECU also pointed out that the Scottish Parliament report, although against a levy on bags, did not consider whether attempts to discourage bag use by other means, including the Sainsbury’s approach, would be sensible. It noted the presenter did make some efforts to put the arguments for plastic bags, for example pointing out that “plastic bags account for a very small amount of landfill”.

The ECU also noted that the guidelines gave latitude to programme makers to “produce content about any subject, at any point on the spectrum of debate as long

as there are good editorial reasons for doing so”. The ECU also noted that the use of plastic bags was not the subject of any legislation currently before Parliament and so he did not feel it fell into the category of a “controversial subject” as set out in the BBC guidelines.

Concluding, the ECU found that:

“[...] after reflecting carefully on the balance of arguments, I think this is the kind of case where the item was not itself so flawed it constituted a serious breach of standards.”

The complainant replied on 3 March 2009 stating that he considered the editor of the programme’s aims for the item to be “excessively subtle”; it was unclear whether sufficient research had been carried out to check the PR guest was impartial; both the UK and Scottish Parliaments were working on the Climate Change Bill in which plastic bags were a prominent feature; and there were many more better qualified people to put the counter arguments in this particular debate than the presenter.

The complaint appealed to the ESC on 30 March 2009.

3. Applicable Editorial guidelines

Section 4 – Impartiality and Diversity of Opinion

Introduction

Impartiality lies at the heart of the BBC's commitment to its audiences. It applies across all of our services and output, whatever the format, from radio news bulletins via our web sites to our commercial magazines and includes a commitment to reflecting a diversity of opinion.

- we exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate as long as there are good editorial reasons for doing so.
- we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.
- we must ensure we avoid bias or an imbalance of views on controversial subjects.
- we will sometimes need to report on or interview people whose views may cause serious offence to many in our audiences. We must be convinced, after appropriate referral, that a clear public interest outweighs the possible offence.

Achieving impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of

output, the likely audience expectation and the extent to which the content and approach is signposted to our audiences.

Impartiality is described in the Agreement accompanying the BBC's Charter as "due impartiality". It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

News, in whatever form, must be presented with due impartiality.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submissions from the complainant and the programme team.

The appeal raised issues relating to the guidelines on impartiality. These guidelines say that impartiality lies at the heart of the BBC's commitments to its audiences – it applies across all of its services and output, whatever the format, from radio news bulletins via its web sites to its commercial magazines and includes a commitment to reflecting a diversity of opinion.

The guidelines also say that impartiality must be adequate and appropriate to the BBC's output – the approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted.

The impartiality guidelines say that the BBC is required to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in its approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

The Committee also considered the guideline which states that the BBC exercises its editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

The impartiality guidelines also say that when the issues involved are highly controversial and/or a decisive moment in the controversy is expected, the BBC will sometimes need to ensure that all of the main views are reflected in its output. This guideline says that in the United Kingdom controversial subjects are issues of significance for the whole of the country, such as elections, or highly contentious

new legislation on the eve of a crucial Commons vote, or a UK wide public sector strike.

The focus of the Committee's discussion was the item on 5 Live Breakfast about the decision by Sainsbury's to stop openly displaying free plastic carrier bags at its checkouts.

This item featured two guests who, during the course of the discussion, both spoke in favour of a complete ban on the use of plastic bags by supermarkets.

The Committee considered whether the banning of plastic bags was the subject of political controversy or a matter of public policy. It noted that the complainant had said that both the UK and Scottish Parliaments had been working on the Climate Change Bill in which plastic bags were a prominent feature. [Bill enacted 26 November 2008].

In coming to its judgment the Committee agreed that this issue did not fall into the category of highly controversial issues as highlighted in the impartiality guidelines. It noted that although relevant legislation on climate change, which included reference to the use of plastic bags, had been going through Parliament at the time of the broadcast the item had not been transmitted on the eve of a crucial vote on highly contentious new legislation.

The Committee agreed that whether or not plastic bags should be banned or the use of plastic bags should be reduced could be construed as a controversial subject in that it was a matter under consideration in the Parliament at the time and that there were arguments for and against the banning of plastic bags.

The Committee then considered the item itself and whether due impartiality had been achieved within the item.

The Committee noted the view of the complainant who said that the phasing out of plastic bags was a highly contentious issue, and that to have had two people on to represent one side of the argument had been "unforgivable". The Committee also took into account the complainant's view that the programme had ignored the alternative environmental argument in favour of plastic bags, and had helped to heap more worry on people working in the plastic bags industry.

The Committee also considered the response of the 5 Live Breakfast editor who had explained that the item had not been intended as a discussion about the merits of the broad concept of whether to ban plastic bags – the programme had instead been trying to explore a particular angle as to whether supermarkets had been acting on environmental grounds or whether there had been an element of seeking good PR.

It was noted by the Committee that the complainant had dismissed this argument, saying that he doubted if more than 1% of the population would have considered this item as anything more than a discussion about whether plastic bags were good things or bad things and that the positive view was simply not represented.

The Committee noted that the guidelines state that the BBC can exercise its “editorial freedom to produce content about any subject, at any point on the spectrum of debate...” The Committee agreed that Breakfast was perfectly entitled to consider the item from a PR and marketing angle in the light of the move by Sainsbury’s to remove all bags from its checkouts.

The Committee noted that the guests on the programme both had a view on the issue from a retail standpoint, the contributor from Modbury being a trader who had started the campaign, with the other guest being the editor of the weekly magazine PR Week. The Committee was satisfied that there was no requirement to include a representative from the plastic bags industry to achieve impartiality.

The Committee agreed that there was no requirement to consider every issue concerning plastic bags on every occasion.

The Committee noted that the approach to achieving impartiality in this case would be affected by: the nature of the subject – an item on the decision by Sainsbury’s to remove plastic bags from checkouts; the type of output – a short item with two guests on the PR and marketing aspects of the decision; the likely audience expectation for an item on Breakfast on 5 Live and the extent to which the content and approach was signposted.

The Committee then considered whether, taking the above into account, the interventions of the presenter had provided due impartiality in this case.

It noted the comments of the complainant that the contributors had not been challenged by the interviewer who had, in the complainant’s words, “meandered along asking a series of lame questions”.

The Committee also considered comments by the ECU who said the presenter had made some efforts to put the arguments for plastic bags by pointing out that they accounted for a very small amount of landfill. The Committee noted what the presenter stated with regard to opposition of the banning of plastic bags:

Presenter:

Is this a good PR move for Sainsbury’s? Because it’s not going to save the planet is it? Plastic bags account for a very small amount of landfill.

And:

Presenter:

What about business? I mean does it impact on business? Do we know yet for example if people have turned away from Marks and Spencer because of the inconvenience of perhaps going and thinking, oh, I’ve forgotten my bag, I don’t want to have to buy one that costs me two quid and I don’t want to have to spend 5p on this plastic one so I’ll end up going somewhere else.

As well as:

Presenter:

Oh dear, now you're being controversial, making it the same as smoking, there are still a lot of people who think the smoking ban, whatever the health messages, is an incursion of freedom, is that not the same, saying when you go shopping you cannot have a bag or you will be a social pariah?

It also noted that the presenter had made a similar point in an interview earlier on the same programme with a representative of Waste Watch:

Presenter:

...Do you welcome this?

Waste Watch:

Yes we do. We welcome any initiative that supermarkets can take to reduce the amount of waste that we have to dispose of.

Presenter:

It's not going to change much is it though? A tiny amount of landfill is actually, is caused by plastic bags.

Waste Watch:

Yes, it is. It's less than one per cent of household waste that is made up of plastic bags so in that respect it's only a very small step.

And:

Presenter:

But however pleased campaigners might be about this, I mean, is it really effective? Is it really changing anything? You've talked about, we've both talked about, how small an amount of landfill is caused by plastic bags. Look at the wider economy, the global economy – India, China – until they change their ways as well this is almost negligible.

The Committee also took into account the ECU's argument that the presenter had challenged the editor of PR Week when he said that plastic bags should be banned altogether because they were destroying the environment.

In coming to its decision the Committee agreed that the presenter had tested the contributors and had challenged the guests on a number of occasions. The Committee noted that it was part of the role of the presenter to present the opposite view within an item if there was not a contributor to specifically put the alternative view forward. The Committee was satisfied that the presenter had done this.

The Committee therefore concluded that the programme had been fair and open-minded in its approach to the item and had not broken the impartiality guidelines.

Finding: Not upheld

My Penis and Everyone Else's, BBC Three, 3 September 2007

1. The programme

This programme was billed as “challenging society’s stereotypes of masculinity as well as getting to the heart of why men are so fixated with their members ... (it) takes on one of society’s last taboos and culminates in one of the most daring exhibitions ever seen in the UK, as (the presenter) puts together the world’s largest collection of penis portraiture ever seen”.

2. The complaint

The complainant’s letter to BBC Information on 16 September 2007 established that his complaint was divided into three different issues:

- Sexual discrimination
- Bias by omission
- Harm and offence

Note: The first two elements of the complaint (sexual discrimination and bias by omission) have already been addressed by the BBC and BBC Trust. For purposes of completeness when summarising the complaint we have included a narrative of all three elements of the complaint with BBC and BBC Trust action.

- Sexual discrimination

The complainant set out in a letter dated 2 April 2008 his view that the programme had been discriminatory according to the provisions of the Sex Discrimination Act 1975, in that the BBC did not treat men and women equally in the visual display of male and female genitalia and that there was therefore not equal privacy afforded to both sexes; and there was not equal opportunity for men to be educated via BBC programmes about female genitalia in the way women were educated about male genitalia.

BBC Information responded to this specific point of sexual discrimination in a letter dated 16 May 2008. The reply included a statement from the BBC’s Legal Department. The reply noted that the BBC did not consider that the complaint met the requirements of Section 29 (1) (b) of the Sex Discrimination Act 1975¹. The statement from the BBC’s Legal Department said:

¹ Sex Discrimination Act 1975

Section 29: Discrimination in provision of goods, facilities or services

- 1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services—

(b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are

“The services provided by the BBC are made available to all, irrespective of gender. The opportunity for education to which you refer was equally available to men and women. It is our opinion that your complaint is not covered by the Sex Discrimination Act.”

The complainant maintained his argument that the programme subjected him to unlawful sexual discrimination contrary to Sex Discrimination Act 1975 in subsequent letters to the BBC Executive and BBC Trust dated 5 July, 5 August and 6 August 2008.

The Editorial Complaints Unit (ECU) (stage 2 of the BBC complaints process) in its reply of 26 August 2008, noted that it was unable to consider the matter of a possible breach of the Sex Discrimination Act as it fell outside its remit which was to consider whether specific material broadcast by the BBC had breached the standards in the Editorial Guidelines.

The complainant did not raise this issue as part of his appeal to the Editorial Standards Committee (ESC) BBC Trust (the third and final stage of the BBC complaints process).

- Bias by omission

In the complainant’s initial letter dated 16 September 2007 he stated that “[he] was not aware of any similarly explicit programmes by the BBC about the vulva”.

In his letter of appeal to the BBC Trust, the appellant stated that the ECU had not addressed the fundamental basis for his complaint, “the extreme bias the BBC shows in displaying men’s genitalia but not women’s”. He also stated in his appeal:

“To me this ongoing very, very strong bias and clearly unequal treatment of men and women in programmes broadcast by the BBC, by regularly showing male genital nudity, belittles men and to me it is a form of ‘spreading misandry and teaching contempt for men’.”

The BBC Trust’s Editorial Standards Committee (ESC) replied to the complainant on the issue of bias by omission on 5 November 2008. The reply, from the Chairman of the ESC, noted that an appeal “must raise a matter of substance – in particular, that, in the opinion of the Trust, there is sufficient evidence to suggest that the appeal has a reasonable prospect of success and there is a case for the BBC Executive to answer.” The Editorial Standards Committee of the Trust noted that the matter raised by the complainant was not a matter of controversy and, as such, the BBC

normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section

“...the provisions of Parts II and III relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.”

was not required to apply due impartiality to the subject matter. The Committee noted that the BBC used its discretion to apply the guideline on due impartiality across all of its output. The ESC did not consider it plausible that the omission of programming about female genitalia could lead to a breach of the impartiality guidelines. The ESC also noted: “As the day to day direction of the BBC’s editorial and creative output was a matter for the Executive, a decision to show female genitalia in explicit detail was for the Executive to make.”

The ESC concluded that the complainant had not made a case for the Executive to answer regarding bias by omission and, therefore, had no prospect of success.

The ESC rejected this element of the complaint.

- Harm and offence

With regard to the third element of the complaint – offence – the complainant noted in his initial letter of complaint dated 16 September 2007 that he thought the timing of the programme inappropriate. He stated:

“Any programme controller must know that a large proportion of children ... have their own television in their bedrooms ... broadcasting this programme at this time, you have provided perfect conditions for aggressive schoolgirls to bully and embarrass sensitive schoolboys by recounting details from your programme.”

“Genitals are a particularly sensitive issue in society and there were explicit comprehensive views of male genitals, views of models of erect penises, scrotum etc and much discussion.”

The complainant also asked whether the BBC would consider the exhibition of photographs at the end of the programme “gratuitous” and the time spent showing the photographs on screen “excessive”, as some penises did not look flaccid.

BBC Information replied on 24 September 2007 that the programme was a follow-up to the BBC Three documentary *My Penis and I*, which had dealt with issues surrounding the size of the presenter’s penis. The follow-up programme had come about as a result of feedback from the first programme. The reply also noted that this documentary (*My Penis and Everyone Else’s*) was one of a number of BBC Three programmes which had dealt with the body image, including *My Big Breasts and Me*, and *My Small Breasts and I*, which had looked at young women whose lives were dominated by having large or small breasts.

With regard to the timing of the programme BBC Information replied:

“Every transmission ... has been after the 9.00pm watershed. The programme was broadcast to a discerning adult audience in this post-watershed slot, and the nature of the material was flagged up both via presentation announcements and the title itself. The content has also been

rigorously checked to ensure that it adheres to the BBC's strict editorial guidelines."

The complainant on 2 April 2008 wrote to the Director-General reiterating his complaint.

BBC Information responded with a letter dated 16 May 2008. The reply explained that the reasoning behind the programme was to confront the embarrassment of discussing the topic of "penis size" in a "supposedly more sexually liberated society". The reply also addressed the issue of offence, it stated:

"Due to the nature of the programme ... it ... was deliberately shown after the watershed because we felt the content was not editorially suited to an earlier slot. All the material alluding to or featuring male genitalia, including the photographs shown at the end of the programme, was considered in relation to the BBC's editorial guidelines on harm and offence and deemed appropriate in terms of the programme's editorial purpose and time of broadcast."

The reply also noted there was no restriction on showing parts, male or female, which included genitalia. However, the reply clarified that nudity in any form should always be justified and appropriate to context. The reply also noted that the pictures of penises was used to illustrate the discussion that the presenter had had with the men who had participated in his study.

In response, the complainant continued to raise the issue of offence and the timing of the programme's broadcast in letters to the BBC and BBC Trust dated 5 July and 5 August 2008. He noted that "BBC guidance says there should not be a rapid transition after the watershed. I believe this programme contravened that guidance".

The complainant also noted that the programme contained the "strongest" material and, therefore, should have appeared later in the schedule.

The Editorial Complaints Unit (ECU) replied on 18 September 2008. The ECU stated that it did not consider it inappropriate to show images of penises in a programme starting at 21.00. The reply noted that the guidelines referred just once to nudity, saying nudity before the watershed must be justified by the context. As such, because this programme went out after the watershed, there was "no presumption in the guidelines that showing images of penises is inappropriate". In reference to whether this could be considered strong material, the ECU noted that there was no sexual context to the images and that there were no erect penises. As to whether the programme prepared viewers to what they would see, the ECU noted that the programme started with "numerous images of classical male nude statues". The ECU also noted the opening commentary which stated:

"In the 21st century men are at last feeling at ease talking about their bodies. They can talk about issues ranging from body hair, moisturising, man tits, muscles and even beer guts. But one thing they still can't talk about, at least

with each other, is the size of their dicks. So why the hell not? A lot of men are hiding some serious insecurities about the size of their penis.”

The ECU also noted that the commentary said: “The film is about penis insecurity, why men have it and trying to do something about it.”

The ECU found, having heard the commentary, the viewer would not have been unaware of what was likely to be shown. The ECU also noted that after the opening sequence of classic nude statues it was another 30 minutes before a penis was shown. The ECU therefore concluded that the programme had done enough to ensure viewers would not have been surprised by its content. The ECU was also satisfied that, given the programme’s subject matter, the pictures of penises at the end of the programme were not “gratuitous”.

The complainant appealed to the ESC on 10 October 2008.

3. Applicable editorial guidelines

Section 8 – Harm and Offence

Introduction

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast and publish innovative and challenging content appropriate to each of our services with our responsibility to protect the vulnerable.

When we broadcast or publish challenging material which risks offending some of our audience we must always be able to demonstrate a clear editorial purpose. Such material may include, but is not limited to, offensive language, humiliation, sexual violence and discriminatory treatment. We must be sensitive to audience expectations, particularly in relation to the protection of children, as well as clearly signposting the material.

Harm and offence editorial principles

- We will not broadcast material that might seriously impair the physical, mental or moral development of children.
- We observe the television Watershed to ensure material that might be unsuitable for children is appropriately scheduled.
- We signpost and label challenging material to ensure our audiences have enough information on which to judge whether content is suitable for themselves or their children.
- We keep in touch with the expectations of our audiences for all of our services.

Audience expectation

We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience at a particular time on a particular day, and in relation to the nature of the service as well as the nature of the content.

We should ask ourselves the following questions:

- what is the likely composition of the audience, including the likely number and age range of children in the audience taking into account school time, weekends and holidays? We should be aware that school holidays are different in different parts of the UK.
- does the talent, slot, genre or service carry pre-existing expectations which may be challenged by the content?
- is harm or offence likely to be caused by misleading the audience or in the inclusion of difficult or challenging material?
- has any difficult or challenging content been clearly signposted?
- are there any special sensitivities surrounding the slot, for example religious festivals, and anniversaries of major events?
- what is the likely "pull-through audience" i.e. what is the nature of the preceding content and what kind of audience is it likely to attract?

Television & the watershed

Television scheduling decisions need to balance the protection of young people and particularly children, with the rights of all viewers, particularly those without children, to receive a full range of subject matter throughout the day. They must also be judged against the requirements of the Watershed.

The 21.00 television Watershed is used to distinguish between programmes intended mainly for family viewing and those programmes intended for an adult audience. However, the BBC expects parents and carers to share in the responsibility for assessing whether programme content is suitable for their children.

After 21.00 the post-Watershed transition to more adult material should not be abrupt and should reflect the nature of the channel and viewer expectations. The strongest material should appear later in the schedule. If sudden changes of tone are unavoidable they should be clearly signposted, for example, giving clear information about scenes of a sexual nature, violence or the use of offensive language.

Nudity

Nudity before the Watershed must be justified by the context.

Sex

In all BBC output the portrayal of sex, or the exploration of sexual issues, should be editorially justified and treated with appropriate sensitivity.

We must be able to justify the frank and realistic portrayal of sex and the exploration of themes and issues which some people might find offensive in post-Watershed programmes.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submission from the complainant.

The Committee considered the complaint under three headings of the BBC's editorial guidelines on Harm and Offence:

- Audience Expectations
- Television and the Watershed
- Sex

Harm and Offence

The Committee noted that the BBC had to balance its right to broadcast and publish innovative and challenging content appropriate to each of its services with its responsibility to protect the vulnerable.

It also noted that when the BBC publishes challenging material which risks offending some of its audience it must always be able to demonstrate clear editorial purpose. The BBC must also be sensitive to audience expectations, particularly in relation to the protection of children, as well as clearly signposting the material.

The Committee noted that the complainant had complained that the issue of genitalia was sensitive and that there were:

“... explicit comprehensive views of male genitals, views of models of erect penises, scrotum etc and much discussion.”

The Committee also noted that the complainant believed that the images shown by the programme contained the strongest material.

The Committee then noted how the programme had introduced the subject matter.

The Committee took note of the title of the programme, *My Penis and Everyone Else's*, and the announcement that had preceded the programme, which stated:

“Now on BBC Three ... we continue the Body Image Season ... and, with some strong language, Lawrence Barraclough is a man on a mission...”

The Committee also noted that accompanying the opening sequences of images of classic nude statues the commentary stated:

“In the 21st century men are at last feeling at ease talking about their bodies. They can talk about issues ranging from body hair, moisturising, man tits, muscles and even beer guts. But one thing they still can't talk about, at least with each other, is the size of their dicks. So why the hell not? A lot of men are hiding some serious insecurities about the size of their penis.”

And

“The film is about penis insecurity, why men have it and trying to do something about it”.

The Committee also noted that whilst the programme discussed and mentioned penises, and showed models of erect penises, it was not until 30 minutes into the programme that photographs of penises were shown.

Whilst the programme contained what some of the audience would consider to be challenging material, the Committee was satisfied that there was a clear editorial purpose for including this material as, even in the context of some light-hearted moments, the presenter identified psychological and medical concerns for men over the size of their penises.

The Committee was also satisfied that sufficient steps had been taken to apprise the audience of the content of the programme. The Committee agreed that the title gave a good indication of the subject matter, along with the pre-transmission announcement which clearly alerted the audience to the fact that the programme would contain content more suited to an adult audience.

The Committee also noted that BBC Three, as a service, appeals to young, adult viewers and, as such, there is an expectation that it will provide more challenging material. Additionally audience expectations would have been framed by the fact that this programme was part of the Body Image series running on the channel which had in previous programmes dealt with such issues as gender reassignment involving full surgery transformation and cosmetic surgery for under-eighteen girls; all had been shown in the 21.00 – 22.00 timeslot.

The Committee noted the clear signposting of the programme’s content, i.e. the programme title, the warning of adult content in the continuity announcement preceding the programme, coupled with the images and commentary at the beginning of the programme.

The Committee therefore concluded that the content of the programme would not have taken the audience by surprise and viewers who found the subject matter concerning had had ample opportunity to change channel to avoid content they may personally find offensive.

Television and the Watershed

The Committee noted that the programme was broadcast after the 21.00 watershed when parents and carers are expected to share in the responsibility for assessing whether programme content is suitable for their children. The title and signposting of the subject matter during the first part of the programme gave a clear indication of the issue under investigation. Even so, the more explicit images and discussion

involving sexual matters were not explored until the second half of the programme, after 21.30. This gave adults more than sufficient time to evaluate the suitability of the programme for any children who may have been watching the programme.

The Committee therefore concluded that the programme was scheduled appropriately.

Sex

The Committee noted that the exploration of sexual issues should be editorially justified and treated with appropriate sensitivity.

The Committee concluded that the approach and content of the programme was editorially justified, given some of the serious issues identified i.e. the taboo amongst men regarding discussion of their genitalia. The Committee considered that the issue was treated with appropriate sensitivity. That is, images of real penises were limited to photographic images in the second half of the programme, 30 minutes past the watershed, and that the images were of flaccid penises.

Overall the Committee considered that the inclusion of challenging material was editorially justified and that there was appropriate signposting and scheduling. The programme was within audience expectations and the Committee therefore did not uphold the complaint regarding offence.

Finding: Not upheld

Panorama: Comeback Coal, BBC One, 1 December 2008

1. Background

This edition of *Panorama* examined the recent increase in open cast mining. The programme referred to the impact which this could have on the government's commitment to reduce greenhouse gases and as it did so, showed a montage including pictures of cooling towers emitting water vapour.

2. The complaint

Stage 1

The complainant emailed the BBC on 1 December 2008 stating that the programme, when discussing carbon emissions from coal fired power stations, had shown almost exclusively pictures of cooling towers emitting water vapour. The complainant noted that the use of these pictures for this purpose had been inaccurate and had perpetuated the misrepresentation of cooling towers as chimneys emitting carbon dioxide and pollutants from the power station combustion process. The complainant asked when the BBC would stop misreporting this issue.

BBC Information replied on 12 December 2008 noting that his complaint had been logged.

The complainant responded on 15 December 2008 reiterating his concern that this was a "serious misrepresentation", which had compounded and reinforced the "myth" that cooling towers were responsible for air pollution. The complainant also referred to a survey carried out by the Royal Society of Chemistry (RSC) which found that most people in the UK wrongly believe that cooling towers emit smoke or harmful gases.

Following an exchange of emails regarding the progress of the complainant's second response, BBC Information replied on 22 January 2009 with a response from the producer of this edition of *Panorama*. The producer noted that there had been no deliberate intention to mislead the public into believing that steam from cooling towers contributed to CO₂ emissions. The producer pointed out:

"Since cooling towers are the most prominent feature at a power station it is difficult to avoid them when illustrating such points."

He also provided information as to how the complainant could escalate his complaint to stage 2 of the process.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 29 January 2009 reiterating his concerns as to the misleading representation of cooling towers in this edition of *Panorama*. He also reiterated the findings of the report of the RSC.

On 2 March 2009 the ECU provided the complainant with its substantive reply to his complaint. The ECU noted the most relevant argument was that water vapour from cooling towers was a direct by-product of coal fired power stations, which did create greenhouse gas emissions. The ECU pointed out that “even if [the audience] did gain a misleading impression, the consequences would not be serious because viewers would still have correctly understood the main point of the sequences that coal fired power stations do create carbon dioxide”. The ECU also pointed out the difficulty for programme makers in representing carbon dioxide due to its invisibility. The ECU stated:

“... it was reasonable to assume that viewers would understand that the cooling towers (and water vapour) were being used to illustrate a more general point about coal fired power stations.”

The reply concluded by saying that the ECU did not believe there were grounds to regard this as a serious breach of accuracy. The reply also noted that the Deputy Editor of *Panorama* had agreed to take greater care in future when using or considering the use of similar pictures, being mindful that viewers could be misled.

The complainant replied on 26 March 2009 noting that he was still not satisfied that the seriousness of the matter had been fully recognised. The complainant believed that in the context of the use of cooling towers to portray, by association, carbon dioxide emissions, the guidelines had been breached in a “serious manner”. The complainant suggested that the vast majority of cooling towers around the world had nothing to do with power generation and, even where power generation was involved, not all fuel types generated carbon dioxide emissions. The complainant concluded by saying the BBC must find another way of illustrating programmes that dealt with carbon dioxide emissions and global warming.

The ECU responded on 27 March 2009 stating that the relevant sequences in the edition of the *Panorama* in question were shown in relation to power stations burning fossil fuels. The ECU repeated its view that in the context of the programme viewers would not have been given a misleading impression as to the link between cooling towers and carbon dioxide emissions. The ECU response also noted that BBC News had issued guidance to staff about the potential to mislead audiences by using pictures of cooling towers when talking about greenhouse emissions.

Stage 3 – Appeal to the Editorial Standards Committee (ESC)

The complainant wrote to the ESC on 2 April 2009 reiterating his concerns at the misrepresentation of the use of cooling towers in the *Panorama* programme.

3. Applicable editorial standards

Section 3 – Accuracy

Introduction

The BBC's commitment to accuracy is a core editorial value and fundamental to our reputation. Our output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve accuracy by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

Misleading audiences

We should not distort known facts, present invented material as fact, or knowingly do anything to mislead our audiences. We may need to label material to avoid doing so.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submission from the complainant.

This appeal raised issues requiring consideration of the editorial guidelines on accuracy and deal specifically with misleading audiences.

The Committee noted that the editorial guidelines on accuracy say that BBC output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The BBC should be honest about what it does not know and avoid unfounded speculation.

The guidelines also provide that the BBC should not distort known facts, present invented material as fact, or knowingly do anything to mislead audiences. It also requires the BBC to check and cross check the facts.

The Committee noted the complainant's argument as set out in his letter of appeal to the ESC that *Panorama* used images of cooling towers "incorrectly,

inappropriately and in a misleading manner to illustrate carbon dioxide emissions associated with coal power stations”.

The Committee then noted where the footage of the cooling towers was used in the programme as well as noting the commentary running over the top of it.

| <i>Panorama: Comeback Coal</i> excerpt of programme transcript | |
|--|---|
| <u>Pictures</u> | <u>Commentary</u> |
| Clouds of water vapour billowing from cooling towers | Presenter (voiceover): Their main concern is that 80 percent of the global rise in carbon dioxide is caused by burning fossil fuels. And you don't get worse... |
| Sunset shot showing cooling towers with steam belching out | ...than coal |
| Dissolves into wider shot showing cooling towers and chimneys which emit CO ₂ | The government is pinning its hopes on... |
| Dissolves into shot showing just cooling towers | ...clean coal... |
| Shot of cooling towers and chimneys | technology called carbon capture and storage. But is that all they are - hopes? |
| Cooling towers and chimneys in slow motion shot | Ed Miliband, Secretary of State for Energy and Climate Change (voiceover): <i>"Mr. Speaker, the government accept all the recommendations of the committee on climate change.</i> |
| Wide shot of German plant | <i>We will amend the climate change bill to cut greenhouse gas emissions by 80 percent by 2050...</i> |

| | |
|---|---|
| Cooling towers at the German plant | <i>...and that target will be binding in law.”</i> |
| Water vapour | Music |
| Driving shots with cooling towers in background | Presenter (voiceover): It’s easy enough to promise a dramatic cut in carbon emissions. The hard part is to deliver it. |

The Committee also noted the response from the producer of the programme who had stated in a reply to the complainant at stage 1 of the BBC’s complaints process:

“[...] there was no deliberate intention to mislead the public into believing that steam from cooling towers contributes to CO2 emissions. The actual commentary used during some of these shots referred to carbon capture and storage and the government’s commitment to reducing CO2 emissions. Since cooling towers are the most prominent feature at power stations it is difficult to avoid them when illustrating such points.”

The Committee also noted what the ECU had said in its response to the complaint:

On the grounds that cooling towers are the most visible aspect of coal fired power stations and are likely to be recognised as such by the average viewer of *Panorama*, I think it was reasonable to assume that viewers would understand that the cooling towers (and water vapour) were being used to illustrate a more general point about coal fired power stations.”

The Committee also noted that guidance as to the use of footage of cooling towers had been issued by BBC News and distributed to specialist science correspondents and output editors in the newsroom, but not to *Panorama*. The Committee noted what was said in the guidance:

COOLING TOWERS – A PLAN TO MINIMISE COMPLAINTS

Every time we use shots of cooling towers while talking about greenhouse gases, we get complaints which, technically, are justified – the towers are not normally releasing carbon dioxide (although to complicate matters in Europe some plants do have chimneys inside cooling towers).

So can we please take extra care and not talk specifically about CO2 when showing the cooling towers emitting steam. Even a wide shot including the exhaust chimneys which do release greenhouse gases could continue to give a misrepresentative picture without careful scripting.

So, wherever possible, stories should avoid giving the towers too much prominence. If a sequence at a power station opens with a shot of the exhaust chimneys, subsequent shots could show the cooling towers but in their overall context.

So this isn't a recommendation to ban cooling tower shots – but instead to raise awareness about the need not to focus on them.

It's extremely important that when covering stories where you are likely to use such shots, you ensure the producer does not use them in headlines or graphic sequences erroneously either.

We are hoping to get some aerial shots of a power station which may help in future coverage. We are also investigating getting an infra-red camera for a day to film power stations, central heating, homes etc for a day.

The Committee, when coming to its finding, accepted that since carbon dioxide is an invisible gas, illustrating it poses challenges for programme makers. The Committee also noted that the production team had included some footage which showed chimneys emitting carbon dioxide in the edit. However, the Committee concluded that it was important to consider this matter from the perspective of the viewer and that it was confusing to use pictures showing plumes of water vapour being emitted from cooling towers while the commentary referred to carbon dioxide emissions. It considered that the overall effect of the sequence was misleading in that whilst there had been a range of pictures used during the montage the impression had been created that pollution was being emitted from the towers. The Committee was satisfied, however, that there was no suggestion in the material before it that the programme had sought to mislead the audience. The Committee found that whether or not the towers were associated with a power station burning fossil fuels, the image of the cooling towers when associated with comments of greenhouse gas emissions had been inaccurate.

The Committee noted that clear guidance had been issued to specialist science correspondents and to output editors in the newsroom regarding the use of footage of cooling towers, and considered that it was important that this guidance was also shared with all factual programming areas to ensure that the inaccurate use of footage concerning cooling towers was not repeated.

Finding: Upheld

Panorama: Comeback Coal, BBC One, 1 December 2008

1. Background

This edition of *Panorama* examined the recent increase in open cast coal mining. It noted that with overseas energy supplies becoming unpredictable, the UK government was keen to secure greater domestic supplies by extracting more of the billions of tons of coal lying beneath our feet.

Three opencast mines in the UK were featured in the programme, including Ffos-y-Fran in Merthyr Tydfil. With regard to Ffos-y-Fran the programme interviewed two local residents opposed to the mine – Canon Steve Morgan and Alyson Austin.

2. The complaint

Stage 1

Pre-broadcast

Prior to the broadcast of *Panorama: Comeback Coal* there was an exchange of letters and emails between the complainant and the programme producer. The correspondence took place between 9 October 2008 and 16 October 2008. The correspondence included documents and photographs supplied by the complainant to support her claims that the interviewees chosen by the programme to represent local opposition to the mine had been inappropriate. The complainant had also believed that the programme would omit certain facts and, therefore, risk becoming a propaganda exercise for opencast mining or the government. The complainant requested that her supporting information be used, and that more representative opponents of the opencast mine be interviewed.

The producer replied that the programme would investigate all claims made by interested parties and, in accordance with BBC policy, produce a balanced and accurate programme.

The complainant also wrote to the Director-General on 3 November 2008 and 26 November 2008. She reiterated her concerns and her request for information regarding the content of the programme as well as requesting a transcript of the programme.

The producer replied on 17 November 2008 to the complainant's initial letter to the Director-General reiterating his earlier points which included that it was not BBC policy to relay editorial content in advance of broadcast.

Following transmission of the programme the complainant wrote (2 December 2008) to the producer stating that the programme was biased and a propaganda exercise for the government.

The producer of the programme replied on 2 December 2008 stating that he believed the programme had presented the case of Ffos-y-Fran opencast mine with detailed presentations from a number of contributors.

Stage 2

On 22 January 2009 the complainant wrote to the Editorial Complaints Unit (ECU). The complainant reiterated her concerns stating that she believed the programme was biased in its choice of guests because she believed the people chosen had worked closely with the opencast firm working the mine. She also noted that the programme had not reflected the full scale of problems encountered by local residents. The complainant referred to supporting information she had previously sent to the programme's producer including a petition against rat infestation and information on the six occasions the main water supply at Bedlinog had burst. The complainant went on to say that the programme "failed to impart truthfully the hurdles campaigners face, the corrupt practice, the broken laws, the built in unfairness of the Public Inquiry System".

The ECU replied to the complainant on 19 February 2009. The ECU did not uphold the complaint. The ECU noted that it was at the discretion of the programme to decide which contributors to include, so long as their choice did not result in a lack of due impartiality. The ECU, having watched the programme, felt that both Canon Morgan and Ms Austin spoke out strongly against the operation of the mine and were critical of the operator, and the decision to allow the company to begin mining. The ECU noted that the complainant may have wished for other points to have been made, but that within the context of a general programme about the increase of opencast mining in the UK, the contributions included in the programme had "appropriately and accurately reflected local opposition to the mine".

The ECU decision also pointed out that the programme was not specifically about issues at Ffos-y-Fran. The ECU noted however, that *Panorama* had mentioned the proximity of the mine to local housing, the lengthy operating hours and the fact that the mine will be operational for 15 years, far longer than most other opencast mines. The ECU also noted that the programme had raised questions about the government's role in approving new opencast mines and that in the case of Ffos-y-Fran the programme had found letters which suggested the government had put heavy pressure on the Welsh Assembly to get the mine approved. The ECU noted that in one letter the Energy Minister Mike O'Brien had told Welsh Assembly members that while he understood the concerns of residents and fears about the environmental impact, "the need for coal outweighs those concerns."

Stage 3 - Appeal to the Editorial Standards Committee (ESC)

The complainant reiterated her complaint about the programme as well as concerns that she had been denied access to information prior to the transmission of the programme which had prevented her from mounting an injunction. She also complained that it had taken the office of the Director-General three and a half

months to respond to her which she believed was “far too long and therefore unacceptable”.

3. Applicable editorial standards

Section 4 – Impartiality and Diversity of Opinion

Introduction

Impartiality lies at the heart of the BBC's commitment to its audiences. It applies across all of our services and output, whatever the format, from radio news bulletins via our web sites to our commercial magazines and includes a commitment to reflecting a diversity of opinion.

- we exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate as long as there are good editorial reasons for doing so.
- we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.
- we must ensure we avoid bias or an imbalance of views on controversial subjects.

Achieving Impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to our audiences.

Impartiality is described in the Agreement accompanying the BBC's Charter as “due impartiality”. It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

Section 7 – Crime and Anti-Social Behaviour

Requests for untransmitted material

All requests to see or obtain untransmitted material must be referred to Controller Editorial Policy. In addition, all requests made in connection with court proceedings or pending or active complaint procedures, for example medical negligence, must be referred pre-transmission to Programme Legal Advice and post-transmission to Litigation.

The BBC will not normally hand over untransmitted material to third parties without a court order. Sometimes it is appropriate to accede immediately to such an order, at other times it will be necessary to contest it and appeal it to higher courts.

We never voluntarily allow access to untransmitted material:

- when to do so would endanger people who work for the BBC.
- when it would make it more difficult to gather such material in the future.
- if the requests appear to be “fishing” for evidence.
- if the material contains information that identifies a confidential source or contributor.
- when it conflicts with our contractual obligations.
- when it shows third parties whose rights may be impaired by handing it over.

The BBC's editorial integrity could also be damaged if other organisations and individuals are allowed access to untransmitted material for their own use. For example, we do not normally release untransmitted material to organisations for training and public relations purposes.

There is no legal obligation for us to keep documents, records or untransmitted material gathered in the production of a programme unless and until they are the subject of a request from the police or the courts or there is a threat of litigation.

Section 17 – Accountability

Feedback and complaints

Audiences are at the heart of everything the BBC does. Audience feedback is invaluable to us and helps improve programme quality.

Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report.

This appeal raised issues requiring consideration of the editorial guidelines relating to impartiality.

The appeal also raised issues about access to information before transmission and a separate issue about the handling of the complaint.

i) Pre-transmission complaints

The complainant was unhappy that she had not been given details of the content of the programme before transmission. The Committee was mindful that it was not BBC policy to divulge the content of programmes prior to transmission. The

Committee noted the specific Editorial Guideline in Section 7 – Crime and Anti-Social Behaviour, which states:

“The BBC will not normally hand over untransmitted material to third parties without a court order.”

Moreover, the Committee noted that the ESC was charged with considering complaints that concern the content of BBC output. The Committee noted the specific sections of its Terms of Reference and procedure which set out the remit of the Committee as to what it will consider on appeal:

I. Does my appeal qualify for consideration by the ESC?

Your appeal must meet the following criteria.

It must be about an editorial complaint. Your complaint must concern a breach of editorial standards and be about content² (for example, a programme or an online article) for which the BBC has editorial responsibility, as detailed in the BBC’s Editorial Guidelines <http://www.bbc.co.uk/guidelines/editorialguidelines>.

The Committee concluded therefore that the complainant’s appeal in relation to the BBC Executive’s refusal to disclose information prior to a programme being broadcast did not raise a case for the BBC Executive to answer. The Committee noted that such issues were operational and were for the BBC Executive to respond to. There was no editorial standard requiring the provision of material to members of the public on request pre broadcast.

ii) The complaint of impartiality

The complainant’s appeal against the programme which was broadcast raised issues requiring consideration of the editorial guidelines which are covered in Section 4 – Impartiality and Diversity of Opinion.

The Committee established that the issue of opencast mining was a controversial subject as set out in the Editorial Guidelines since it was a matter concerning public policy and was politically controversial. The Committee was mindful of the particular requirement as set out in the BBC Guidelines to “ensure we avoid bias or an imbalance of views on controversial subjects” and that these subjects should be treated with due accuracy and impartiality.

The Committee also noted that impartiality must be adequate and appropriate to the output and that the approach to achieving impartiality will vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted.

² In this case content is defined as that which has been transmitted or published on a BBC service or under the BBC’s brand

The complainant argued that the programme was biased in favour of the government and the coal industry describing it as a “propaganda exercise” on their behalf. She argued that it was not impartial for two reasons: firstly, she believed the selection of interviewees amounted to bias and secondly, she felt that the programme’s failure to include the full extent of the disruption which the mine caused to local residents also resulted in bias.

The Committee noted that the programme had included interviews with opponents of the mine at Ffos-y-Fran including Alyson Austin of the campaign group, Residents Against Ffos-y-Fran, as well as Canon Steve Morgan, a local vicar who was shown preaching against the mine from his pulpit. The complainant argued that neither interviewee was representative of local opposition to the mine. However, the Committee noted that both interviewees expressed their opposition to the mine forcefully and eloquently. The Committee noted extracts of what the two contributors had said:

Canon Steve Morgan:

Do you think for one moment that a local authority in Guildford or Cobham would allow open casting to take place within 35 metres of the nearest house? Merthyr has paid a heavy price for industrialization in the past. The coal barons want us to pay that same price again – raping the land of its assets at the expense of the people.

Interviewer:

Why is this something that you preach about in your church?

Canon Steve Morgan:

Because we believe that God has given us a responsibility in the Anglican Church to care for the people but also for the land. What I object to is the fact that right here in Merthyr Tydfil in extreme proximity to thousands of homes this opencasting is taking place.

And

Alyson Austin:

I’m about 400 metres away from this site...

Interviewer:

Alyson Austin bought her home in 2003 – two years before the mining company Miller Argent was given permission to work here.

Alyson Austin:

I actually live – those red brand new houses that have been built just four or five years ago

There is no getting away from the noise they start-up at 7 o’clock in the morning they’ve got planning permission to work until 11 o’clock at night.

Interviewer:

When do they actually finish?

Alyson Austin:

They actually finish now at 10 o'clock after a long and hard fight with them... but whereas they were finishing at one on a Saturday they're now working till five to make up for it.

You can't go to bed until those machines have closed down for the night. My children can't sleep until after 10 o'clock. It's not good for children – they have to be up at 7 o'clock in the morning.

Interviewer:

You've become a protester – has this become something of a game for you now?

Alyson Austin:

No it hasn't. It's my life. You've got to understand that. It is my life. What this is doing is destroying my life. It's not a game at all.

The Committee was mindful that impartiality is described in the Agreement accompanying the BBC's Charter as "due impartiality" and requires the BBC "to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view". The Committee concluded that the selection of interviewees had provided an appropriate voice and representation from the local community and, as such, had avoided bias or an imbalance of views in the programme.

The Committee then went on to consider whether the programme should have outlined the full extent of local grievances against the mine such as problems with flooding and rat infestation. The Committee noted the context of the programme which was questioning whether, at a national level, the government was reversing its policy on opencast mines by stealth. The Committee noted that Ffos-y-Fran was one of four case studies within the programme and, as such, the programme was not solely concerned with this specific opencast mine. In view of this fact and that in order to achieve due impartiality when covering a controversial subject there was no requirement for the programme to include every argument or every facet of every argument, the Committee concluded that the programme had met the required editorial guideline. An appropriate amount of detail of the complaints expressed by the local community of Merthyr had been included within the programme to show the level of concern and opposition to the mine to the viewing audience.

The Committee was therefore satisfied that the programme had met the guideline and thus did not uphold the complaint regarding impartiality.

iii) Complaints handling

With regard to how the complaint had been handled by the BBC Executive the Committee noted that the complainant had complained that having written to the Director-General, the complainant had stated that she had to wait three and a half months for a response. The Committee noted that her first letter to the Director-General dated 3 November 2008 had been answered on his behalf by the programme's producer within the target time of ten working days. The Committee also noted that a second letter from the complainant to the Director-General, dated 26 November 2008, had taken the BBC six weeks to answer. However, the Committee noted that this delay spanned not only the Christmas period, but that the letter was caught up in the large volume of correspondence generated by the Russell Brand complaint. The Committee noted that once the letter had come to the attention of BBC Information it had been answered on the same day (8 January 2009). The Committee was also aware that given the very large volume of complaints received at that time by BBC Information, who were charged with responding to the complainant on the Director-General's behalf, response times had been extended beyond normal times. The Committee regretted that this reply had been delayed but felt that there were mitigating circumstances regarding the lateness of the second reply and that the reply had been dealt with as quickly as possible with regard to the particular circumstances at the time. The Committee noted that the delay to replies was short lived and that since then BBC Information has been able to provide a substantive response to complainants within ten working days to over 90% of all complaints received.

Finding: Not Upheld

“London summit on Jewish refugees”, BBC News Online

1. Background

The article concerned a US-based group – Justice for Jews – who are campaigning for the recognition for Jews who were forced to flee from Arab countries after 1948. The article, which also described the group’s aims, noted that Justice for Jews claimed that most of the 850,000 Jews living in Arab countries prior to 1948 were forced to leave. The aim of Justice for Jews is that the story of these Jews is acknowledged alongside the story of Palestinian refugees. The article also included indirect quotes attributed to a BBC journalist.

2. The complaint

Stage 1

The complainant emailed BBC Information on 1 July 2008 objecting to the indirect quotes attributed to the BBC’s Arab Affairs analyst Magdi Abdelhadi (“the correspondent”).

The relevant element of the article stated:

“He says one undisputed fact is that Jews were part of Arab societies for centuries, where they were fully integrated in their societies until Israel was established.”

The complainant considered it to be inaccurate to suggest that Jews living in Arab countries, pre-1948, were well integrated into Arab society. The complainant said that had the Jewish communities been integrated they would not have left Arab countries following the establishment of Israel. The complainant noted that while there may be a dispute about the exact numbers who left, there is no doubt that hundreds and thousands did so, and less than 10,000 remain.

Response from stage 1 of the BBC complaints process

The BBC response at stage 1 of the BBC’s complaints process (dated 22 July 2008) included a response from the Middle East desk of BBC News Online. The reply stated that there were many accounts of oppression and violence obliging Jewish refugees to leave Arab countries. The reply also noted that there were accounts of Jewish refugees leaving because they wanted to live in a Jewish state. It also noted that some were pressurised to do so by Jewish or Zionist groups. Nevertheless, the reply noted that the correspondent had overstated the case about integration. The reply also noted that many Jews were integrated but that their status in law as a protected people, like Christians, restricted their rights at certain times and places.

With regard to the number of Jewish refugees leaving from Arab countries, the reply noted that the number of refugees depended on the definition of the term “refugee”; the reply noted that while there were many accounts of Jews leaving because of oppression and violence there were also accounts of Jews leaving Arab countries because they wanted to live in a Jewish state. It noted others felt that they were pressured to leave by Jewish or Zionist groups. The BBC reply had also noted that in the article the figure for the number of Jewish refugees was attributed to Justice for Jews – the group responsible for organising the London summit.

Amendment to the article

BBC News online first amended the article as a result of complaints from readers.

The (first) amendment to the article stated:

“He says one undisputed fact is that **many** Jews were part of Arab societies for centuries, where they were fully integrated in their societies until Israel was established.” (our emphasis)

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 23 July 2008. He acknowledged the BBC’s response at stage 1 that the correspondent’s remarks had overstated the “case about integration”.

However, the complainant continued to believe that the correspondent overstated the case of integration i.e. that they were “fully integrated in their societies (Arab countries)”, pointing out that there had been state-sponsored violence against Jews in many Arab countries.

The complainant also noted that any argument concerning the number of refugees depending on the definition of a refugee should apply equally to Arab refugees. The complainant commented that Jews whose parents and grandparents fled Arab countries do not claim to be refugees, but say they are descended from refugees. The complainant noted that “the BBC still refers to millions of Palestinian refugees despite the fact the overwhelming majority were never in the country that they claim to be refugees from”.

In further correspondence with the ECU (an email dated 12 August 2008) the complainant said that the BBC never questioned the status of descendants of Palestinians who left Palestine in 1948 as refugees. He stated therefore that his complaint was principally about the different way that Jewish and Arab refugees had been treated by the BBC.

Response from the ECU, stage 2 of the BBC complaints process

The ECU replied that the complaint was not within its remit. It explained that points raised by the complainant at this stage related directly to the response from stage 1 rather than the published content. The ECU also noted that as the complainant had acknowledged his satisfaction with the BBC's statement that the comments of the correspondent had overstated the case of integration, this "dealt with the point of the complaint".

Stage 3 – appeal to the BBC Trust

In his appeal to the Editorial Standards Committee of the BBC Trust (ESC) (dated 19 September 2008), the complainant acknowledged the change made to the website article but considered it still did not go far enough in that it downplayed the suffering of Jews in Arab countries. He also believed the ECU had been wrong to believe his acknowledgement of the amendment to the site had meant he was satisfied with the BBC's response.

Further amendment to the article

Before the ESC considered the appeal a second amendment was made to the online article in January 2009 as a result of this complaint.

The second amendment stated:

“He says one undisputed fact is that **many** Jews were part of Arab societies for centuries, **although not with equal rights**, until Israel was established.”

(our emphasis)

3. Applicable editorial standards

Section 3 – Accuracy

Introduction

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Misleading audiences

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Section 4 – Impartiality and Diversity of Opinion

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Achieving Impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to our audiences.

Impartiality is described in the Agreement accompanying the BBC's Charter as "due impartiality". It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

News, in whatever form, must be presented with due impartiality.

4. The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's editorial guidelines. The guidelines are a statement of the BBC's values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submission from the complainant.

This appeal raised issues requiring consideration of the editorial guidelines relating to Accuracy and Impartiality.

The Committee noted that the editorial guidelines on accuracy say that BBC output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The BBC should be honest about what it does not know and avoid unfounded speculation.

The guidelines also provide that the BBC should not distort known facts, present invented material as fact, or knowingly do anything to mislead audiences. It also requires the BBC to check and cross check the facts.

The Committee noted the guidelines require that impartiality be adequate and appropriate to the BBC's output; the approach to achieving it will vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to audiences. The Committee also noted that due impartiality requires the BBC to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in its approach to a subject. It does not require the representation of every argument or every facet of every argument on every occasion or an equal division of time for each view. The Committee noted that news, in whatever form, must be presented with due impartiality.

The Committee considered the context and purpose of the item: the first London meeting of a group campaigning for greater recognition for the status of Jews who left their homes in Arab countries, following the foundation of the State of Israel.

The Committee noted that whilst the subject material related to a significant historic event, involving the mass movement of hundreds of thousands of Jews, the story itself was pegged to a specific news event: the London conference of Justice for Jews. The Committee considered the news item in relation to the guidelines on impartiality which require it to be "adequate and appropriate to [the BBC's] output":

- The approach to achieving it [impartiality] will vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to audiences.

The Committee considered it entirely appropriate within the guidelines that the article focussed primarily on the news event. While it acknowledged the complainant's argument that a wealth of evidence exists documenting what happened during this period, it felt that an item of this length could not be expected to reflect the complexity of the issue in the detail which a longer item, or an item of a different nature, may have done. The requirement remained that the item be duly accurate and duly impartial.

The Committee felt the most important consideration was whether the news item had correctly described the organisation and its aims, and that any historic context in the article was duly accurate.

It noted first the original version of the website article, which had given the misleading impression that Jews had been totally integrated in the Arab countries in which they lived, and that they had enjoyed equal rights until the State of Israel was founded. The Committee was satisfied that subsequent alterations dealt adequately with these two issues.

The Committee then turned to the other issues raised by the complainant within his correspondence with regard to the article, as amended. The complainant said:

“... the article is misleading and totally downplays the extent of suffering of Jews in Arab countries.”

It noted the evidence provided by the complainant to support his claims including, but not limited to, material downloaded from the Justice for Jews website, archive newspaper articles and documentary material from the period, and the video, “The Forgotten Refugees”. Collectively they document some of the laws and measures enacted in the various Arab countries, discriminating against their Jewish populations, as well as a number of specific violent incidents. The Committee noted the following quotes from the article which is the subject of this complaint, as relevant to its consideration.

The first quote is referring to the Jews who left Arab countries after 1948:

“It [Justice for Jews] says most were forced to flee due to hostility when Israel was created.”

The second is the (amended) reference to legal rights, indirectly quoting the correspondent:

“He says one undisputed fact is that many Jews were part of Arab societies for centuries, although not with equal rights, until Israel was established.”

The final quote relevant to this aspect of the complaint was the analysis of the variety of circumstances which led to the departure of Jews from Arab countries. The Committee noted what was said:

“Some left because they were Zionists, others because of growing hostility towards them after the Arab-Israeli wars of 1948 and 1967, and there were also those who were encouraged to leave by the new Israeli state.”

The Committee considered whether, in the necessary compression of the historical evidence for this short news item, the importance of the suffering of the Jews as a factor in their departure had been downplayed. And if so, whether it rendered the article, as the complainant contends, misleading and lacking in impartiality. The Committee took into account the broader historical context, including that provided by Professor Fischbach, suggesting that alongside the threats experienced by some Jews, and the discriminatory laws, there were other powerful factors motivating the exodus from Arab lands. The Committee noted what Professor Fischbach said:

“The circumstances surrounding those Jews’ exodus often were traumatic and in some cases were the basis for the dispossession of their property. Some of it was formally sequestered or confiscated according to laws enacted by Arab states. Other property was seized by the authorities or even individuals in ad hoc fashion.”³

And

“It is a false dichotomy to say that Jews left the Arab world either because of anti-Semitism and anti-Zionism, or because they were Zionists who wanted to move to Israel from political convictions. The reasons for their decisions to leave, when they left, and where they went, were varied and complicated.”

“Some Jews did indeed feel threatened from rising anti-Zionist and/or anti-Semitic sentiments and, in some places, laws were enacted during the 1948 Arab-Israeli war (and, later, 1956 and 1967 wars). However, despite this, some Jews still chose to remain in their respective countries. One must also consider that the threat that some Jews felt, especially in North African countries, was not merely the result of the struggle between Zionism and the Arab world, but also from factors such as the trauma they suffered during the Second World War, fear about their future status in independent Arab countries following de-colonization in the 1950s and 1960s, and economic concerns.”

The Committee concluded that it was satisfied that the article fairly and accurately reflected the Justice for Jews’ position on the subject. This, it noted, was supplemented by the article’s specific reference to the hostility suffered by Jews in Arab countries. The Committee felt it was appropriate, in view of the available evidence, for the article to also refer to other possible causes for the departure of the Jewish populations. The Committee noted that whilst no detail was given in the article about the extent or the nature of the suffering experienced by Jews, as the complainant would have liked, it was not necessary in the context of this short article to achieve due accuracy and impartiality and the Committee also noted that neither was there detail given in relation to any of the other possible causes for their departure.

The Committee therefore concluded that in this respect the article was duly accurate and impartial.

The Committee then considered whether, as the complainant maintains, the article had been incorrect to represent the numbers who left as “disputed”:

“I find it quite surprising that the numbers are questioned.”

³ *Jewish Property Claims Against Arab Countries*, Michael R. Fischbach © Columbia University Press 2007

The Committee acknowledged that there were hundreds of thousands of Jews living in Arab countries before 1948, and that less than 50,000 remain today. It noted too that the article accurately reported the Justice for Jews' claim that around 850,000 Jews lived in Arab countries prior to 1948. The issue was whether the article had been right to report that the numbers who left were in dispute. It felt the relevant consideration in relation to the complainant's point, was the context. The Committee noted the paragraph to which the complainant is referring:

“The BBC's Arab Affairs Analyst, [the correspondent], says the subject is highly controversial as the number of Jews who left, and the conditions under which they left, are disputed.”

The Committee noted that the pre-1948 population did not all but disappear overnight. It happened over a generation. It felt that sufficient evidence had been provided to suggest that over that period there existed a variety of reasons which account for the reduction of the Jewish population in Arab countries. The Committee considered the author was entirely justified in commenting that the matter was controversial. The Committee noted the article did not argue that Justice for Jews had got their numbers wrong, instead it reflected, on the basis of sound evidence, that a genuine controversy existed over the variety of possible reasons which motivated the departure of the various Jewish communities, and over the numbers.

Accordingly, the Committee did not uphold the complaint in this respect.

The Committee then considered the complainant's view that those who left should correctly be described as refugees. It acknowledged the evidence provided by the complainant to support his claim, including UN papers and the recent votes in the US House of Representatives and Senate. However, the Committee noted that the article did not discuss the legitimacy or otherwise of the case for describing them as refugees. It considered these quotes from the article relevant.

First, the headline:

“London summit on Jewish refugees”

Paragraph two:

“The conference organisers, Justice for Jews, say they want to ensure the story of Jewish refugees is told, alongside that of Palestinians.”

And the picture caption, accompanying the article:

“Conference organisers say inadequate attention is paid to Jewish refugees.”

The Committee reflected that on none of these occasions was the use of the description “refugee” questioned. It noted that the complainant did not cite anything from the article in raising the issue, but related it instead to correspondence he had

received at an earlier stage of the complaint, in which it was suggested that not all of those who left could be termed “refugees”. The Committee noted its remit was to consider the article itself as published. Therefore it concluded there was nothing to test against the guidelines, in relation to this aspect of the complaint.

Finally, the Committee considered whether the article as a whole fulfilled the requirements for Accuracy and Impartiality with regard to the way in which Jewish refugees are treated in comparison to Palestinian refugees by the BBC.

The Committee did not consider it appropriate or relevant to assess the way the BBC covered this particular aspect of this particular issue alongside the entire BBC coverage of the Palestinian refugee issue. It noted that the correspondent had confirmed that the topic of Jewish refugees from Arab countries was something he hoped to return to in more detail in the near future. The Committee concluded that the article under consideration was a specific news item about a specific event and was not in any way intended as a comprehensive historical account. It considered that the content reflected the issues with due accuracy, gave due prominence to the Justice for Jews campaign, and fairly represented the degree of controversy surrounding the issue. It noted that more than half of the article, the headline and the picture caption were devoted to reporting the news event and the campaign background. Given the controversial topic discussed, the Committee considered the balancing comments, which placed the campaign in its wider context, were entirely appropriate.

Finding: Not upheld