

Editorial Standards Findings

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

October and November 2011 issued December 2011

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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: Alison Hastings (Chairman), Mehmuda Mian, David Liddiment, Elan Closs Stephens, Richard Ayre 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 accepting 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
180 Great Portland Street
London W1W 5QZ

Summary of findings

Science Betrayed, BBC Radio 4, 24 March 2011

The complainant said that an episode of the two-part BBC Radio 4 series *Science Betrayed* was inaccurate and biased in relying on a particular contributor and his interpretation of source material. The complainant said that allegations regarding Andrew Wakefield, the author of a paper published in *The Lancet* in 1998 linking bowel disease and the onset of autism to the MMR vaccine, made by a contributor to the programme were not challenged. The complainant also said that contributors to the programme had conflicts of interest which should have been declared within the programme.

The Committee concluded:

- that the programme had been accurate and precise about the role of Professor Pepys (a contributor to the programme) in the affair in question and that, in choosing not to advise the audience of his current link with GlaxoSmithKline (GSK), there was no evidence of any intent to mislead, nor the effect of misleading the audience.
- that the nature of the British Medical Journal (BMJ)'s relationship with Merck and GSK was sufficiently remote from the context and content of the BMJ editor's contributions to the programme that disclosure of the links to the audience was not required on this occasion to ensure due accuracy.
- that the programme had made clear that the BMJ was the publisher of the most recent allegations which had been made by the main contributor to the programme, so equipping the listener to assess the weight to place on the BMJ editor's separate contribution.
- that the programme made it absolutely clear who the main contributor was and that listeners were given sufficient information to assess the comments made by the main contributor in the context of his role in the events being described. Further, that presentation of the main contributor's credentials was both comprehensive and precise, such that the audience was able to assign due weight to the contribution as required by the guidelines.
- that it was reasonable for the programme to include allegations from the main contributor in the form that it did, and that the allegations of dishonesty or incompetence were set out as the contributor's view and not that of the programme. Further, that Andrew Wakefield had been given adequate opportunity to state his view regarding the same specific issue and that, while it would have been preferable had Mr Wakefield's comment included a specific response to the implication that he had been incompetent or dishonest, this was not essential to ensure due accuracy.
- that a contributor's criticism of the "red books" (a child's main health record, used by GPs or healthcare professionals to record its weight, vaccinations and other important health information) was not a criticism of the books per se but of their apparent role in supporting the conclusions reached in the *Lancet* paper.
- that, while additional information regarding the *Lancet* paper's use of a review of the original pathology reports would have been helpful, this was not necessary to achieve due accuracy. Further, that the programme took adequate steps to reassure itself of the relevance and significance of the fact that the original pathology conclusions were not those contained in the *Lancet* paper.

- that the allegations made in the programme were well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.
- that the programme had been fair and open-minded in its dealings with Andrew Wakefield and in the way it presented the allegations against him.

The complaint was not upheld.

For the finding in full see pages 5 to 23.

Appeal Findings

Science Betrayed, BBC Radio 4, 24 March 2011

1. Background

Science Betrayed was a two-part series on BBC Radio 4 in which Dr Adam Rutherford reported on how scientific misconduct is investigated. The second programme focussed on Dr Andrew Wakefield and his claims in a 1998 Lancet paper of links between the MMR vaccine, bowel disease and the onset of autism.

2. The complaint

Stage 1

The complainant first wrote to Adam Rutherford, the presenter of the programme, on 27 March 2011. He asked whether Mr Rutherford was aware that "University College London and Professor Mark Pepys (an interviewee in *Science Betrayed*) were business partners with MMR manufacturers and former defendants GSK, and that Professor Pepys has just been appointed first GSK academic superstar". In relation to the section of the programme in which Brian Deer (an interviewee in the programme) criticises Andrew Wakefield's apparent reliance on the Red Book records of a child's early years, the complainant said (contrary to Brian Deer's implication otherwise):

"it would be highly unusual in the NHS for consultants to have been sent all the GP notes for a patient on referral ... they would compile their own patient histories."

He concluded:

"It seems to me that Deer made some remarkable statements which you did not challenge."

The producers of the programme replied on 8 April 2011. They were unable to comment on any relationship between Professor Pepys and the pharmaceutical industry but said they did not believe:

"such links in themselves would constitute evidence of any inappropriate behaviour regarding the issues he discussed in the programme."

In response to the complainant's second point the producers said they remained satisfied with the conclusions presented in the programme. Andrew Wakefield's statement in the programme that he did not have access to GP records was:

"in direct contradiction to the original Lancet article published in 1998 which states 'developmental histories included a review of prospective developmental records from parents, health visitors and general practitioners'".

The complainant replied on 8 April 2011. He said his point was not that there was

anything wrong with a commercial relationship between Professor Pepys and GlaxoSmithKline (GSK) but that listeners should have been aware. He added that listeners were also not told that the British Medical Journal (BMJ) who commissioned the articles in which Brian Deer alleged Andrew Wakefield had committed scientific fraud, have a business partnership with Merck, who also manufacture the MMR vaccine.

“while being ultra-fastidious about Andrew Wakefield’s alleged competing interests, you take no responsibility for adequately informing the listeners of those of others interviewed in your programme”

The complainant said that the programme and Brian Deer had misrepresented the Lancet paper. He said it was unlikely that Dr Wakefield had intended to do anything other than describe the ‘Personal Child Records’ or Red Books, which he said were likely to contain more detailed information about the child’s health and development, than GP records and were also written by GPs.

“To make out on the back of this that Wakefield was dishonest and incompetent is surely neither honest nor competent.”

Quoting from an NHS website description of the Red Book, the complainant said the “baby books” to which Mr Deer referred are extremely important. The complainant said (his emphasis):

“the Red Book (for the child's own safety and well-being) will likely contain much more detailed information about the child's health and development than the GP records, and **are also written in by GPs**”

The Acting Editor of BBC Radio Science responded on 11 April 2011 saying that he had nothing to add to the previous emails other than that the complainant’s comments reflected a “difference of interpretation over some of the statements made in the programme”.

Stage 2

The complainant wrote to the ECU on 12 April 2011. He reiterated the points he had made at Stage 1. He alleged that the producers of the programme had misinterpreted the Lancet paper in suggesting Andrew Wakefield had implied in the text of that paper that he had used GP notes.

The complainant raised two more allegations relating to declarations of interest. He said listeners should have been told that Mr Deer had an arrangement with General Medical Council (GMC) lawyers that he would not be named as the complainant at Mr Wakefield’s hearing so he could continue to report the case. In addition, the British Medical Journal, whose editor was interviewed in the programme and who published Mr Deer’s allegations against Andrew Wakefield is in a business relationship with MMR manufacturer Merck. The complainant said Merck and GSK had sponsored the BMJ’s recently established awards and the audience should have been informed of that fact.

The Complaints Director of the Editorial Complaints Unit replied to the complainant on 14 April 2011 and said his complaints were being investigated. There was a short exchange of emails in which the complainant summarised his two points of complaint and noted also that the editor of the BMJ had said that a claim of fraud against Andrew Wakefield could not depend on the claim that he had altered data from GP notes.

The ECU replied to the complainant in full on 31 May 2011. The complaint had been considered against the guidelines on Accuracy. It was not upheld.

In relation to Professor Mark Pepys and the allegation that the programme should have informed listeners of University College London's (UCL) links with GSK, the ECU said the majority of Professor Pepys' contribution to the programme was in the context of actions he took at the end of the 1990s. The ECU understood that the Professor's relationship with GSK did not begin until early 2011. The ECU reflected that the relationship between GSK and Professor Pepys was in connection with what was being billed "as a partnership to develop medicines more cost effectively". In the ECU's view

"this would not have a significant or material effect on Professor Pepys' ability to comment on his recollection of what happened in relation to Andrew Wakefield ... it is (not) reasonable to conclude that listeners would have judged his contribution in a materially different light if they had been informed (of the Professor's links with GSK)."

In relation to Brian Deer and his role as the complainant in the GMC hearing, the ECU said the programme clearly stated that he was a journalist who had spent many years investigating the claims made by Andrew Wakefield, that this had led to the GMC inquiry and Dr Wakefield being struck off the medical register. The ECU was aware of the relationships of which the complainant referred but did not think omitting to tell the audience was material to their understanding of the allegations made against Dr Wakefield. It was important the audience was given a balanced view and in this context Dr Wakefield was given adequate opportunity to respond to the allegations. Knowledge of other external relationships would not have had a significant or material impact on the way listeners would have judged Mr Deer's contribution.

The same principle applied to the contributions of the editor of the BMJ, Fiona Godlee. In the ECU's view any commercial relations she had with Merck or GSK were irrelevant to the audience's understanding of the two areas on which she gave comment: the remit of the GMC hearing and the Lancet's conduct.

In relation to the allegation that the programme did not produce evidence to support the allegations of scientific fraud, the ECU said that the allegations did not stand or fall on the single question of whether or not Dr Wakefield had access to the children's GP notes. The ECU said that Mr Deer gave two specific examples of scientific misconduct in the programme, neither of which were dependent on reference to GP notes.

The first allegation was that contrary to the claims in the Lancet paper, the original

pathologist reports did not indicate serious gut inflammation in any of the twelve children.

The second allegation raised doubts about the apparent link identified by Dr Wakefield between the timing of the MMR vaccine and symptoms identified in his twelve case studies. The programme drew attention to a line in the Lancet paper which said patients' histories were based on "developmental records from parents, health visitors, and general practitioners" and questioned whether Dr Wakefield had given the misleading impression that he had consulted GP notes when his team had only had access to the Red baby book.

The ECU said, however, this claim was not the only, or principal, source of Brian Deer's evidence. It was made clear in the programme that Mr Deer had gone back to original Royal Free records to challenge "the central point of the Lancet paper". The section included a lengthy contribution from Mr Deer in which he made clear that one of the grounds for questioning Dr Wakefield's competence was a reliance on the information in the Red Books. The section also included Dr Wakefield's response to the claims. The ECU quoted from Brian Deer's BMJ article which concluded:

"no case was free of misreporting or alteration. Taken together, NHS records cannot be reconciled with what was published, to such devastating effect, in the journal".

Finally the ECU addressed the allegation that the programme focussed on "a tenuous and unwarranted reading of the Lancet paper".

The ECU pointed out that the choice of what to include in a programme is a matter of editorial discretion and does not, of itself, raise an issue of editorial standards. The programme included a rebuttal from Dr Wakefield and therefore achieved the necessary due impartiality and fairness.

The complainant requested a transcript of the programme, which was provided by the ECU on 1 June 2011.

Stage 3

The appeal was lodged with the BBC Trust on 6 June 2011. The complainant was dissatisfied with the ECU's approach which he said failed to assess his complaint in the wider context of the programme:

"(the ECU) repeatedly goes to some lengths to narrow the context of certain contributions to the programme in order to protect it from the claim of unbalance, but the primary context is the highly prejudicial one of the opening and Adam Rutherford's general presentation."

The complainant wrote that although Mr Wakefield is not appealing the GMC verdict for financial reasons, many of the issues of substance are under appeal by his colleague Professor John Walker Smith. He said the programme should not have relied on those findings being safe, and is very probably in contempt of court.

The ECU had said Andrew Wakefield was given adequate opportunity to respond, but the complainant said it was not a level playing field. He said that Dr Wakefield's work is described as "the biggest medical scandal in living memory", and his chief accuser is compared to "Bernstein and Woodward". The complainant said that it is not for (the ECU) to decide whether disclosures (of potential conflicts of interest) would make any difference to the listener: "I do not want him to make up my mind for me."

The complainant said that Professor Pepys and UCL are currently investigating Dr Wakefield and are therefore presently conflicted in their commercial links to the MMR vaccine manufacturer GSK. This should have been disclosed to the audience.

The complainant disagreed with the ECU's contention that the nature of the present relationship between UCL and GSK is not relevant to the Wakefield issue. He said that large pharmaceutical companies wield undue influence as noted in a 2005 House of Commons Select Committee on Health report into the influence of the pharmaceutical industry.

The complainant said that Professor Pepys is apparently involved in investigating events to which he himself was a party, in addition to him and UCL now enjoying the patronage of GSK. The complainant said that it is not the BBC's job to cover up this state of affairs.

The complainant said that it is a matter of record that Brian Deer made a series of complaints and had an unavoidable vested interest in a successful prosecution. The complainant was concerned that the ECU had concluded disclosure was unnecessary because in their opinion the views Mr Deer represented were not extreme.

The ECU had said Fiona Godlee's contributions to the programme as editor of the BMJ were confined to commenting on the Lancet paper and the remit of the GMC hearing and therefore disclosure of links to MMR manufacturers was not required. The complainant said this disregarded the fact that the BMJ was also the publisher of Mr Deer's latest raft of allegations, and Fiona Godlee's views on the matters on which she commented may have been coloured by commercial considerations:

"Even if they were not the conflict should be reported, so that the context is transparent – that is the whole point about disclosure."

The complainant said that the ECU was wrong in stating that the complainant's sole reason for denying there was fraud in the paper was the issue that Dr Wakefield and colleagues did not have access to GP notes. In an email sent to the ECU on 17 April the complainant stated that not one of the twelve authors of the original study have ever repudiated any of the original data used in the study and, therefore, claims of data fraud would have to be against all of them.

The complainant said that, for example, Brian Deer's search of the pathologist's original reports in the Royal Free's records, which he said did not indicate serious gut inflammation in any of the children, have been rebutted in the columns of the

BMJ by the histopathologist who conducted the original analysis.

Repeating his earlier arguments that the Red Books are more important than Brian Deer allowed, the complainant contended it was wrong that Brian Deer was allowed to claim Dr Wakefield was incompetent for using the Red Book records.

The complainant concluded there had been an over reliance on Brian Deer and his "uncertain ability to interpret specialised information".

3. Applicable Editorial Standards

The following sections of the 2010 Editorial Guidelines are applicable.

Section 3 – Accuracy

3.1 Introduction

The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the BBC Charter.

The term 'due' means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary. The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content. The requirements may even vary within a genre, so the due accuracy required of factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news.

Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.

Where appropriate to the output, we should:

- gather material using first hand sources wherever possible
- check and cross check facts
- validate the authenticity of documentary evidence and digital material
- corroborate claims and allegations made by contributors wherever possible.

In news and current affairs content, achieving due accuracy is more important than speed.

3.2 Principles

3.2.1 We must do all we can to ensure due accuracy in all our output.

3.2.2 All BBC output, as appropriate to its subject and nature, 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. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

3.2.3 The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content.

Avoiding Misleading Audiences

3.4.11 We must not knowingly and materially mislead our audiences with our content. We may need to clarify the nature of some content by labelling (for example, verbally, in text or with visual or audio cues) to avoid being misleading.

Sources

3.4.12 We should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that our audiences can judge their status.

Section 4 – Impartiality

Practices

Breadth and Diversity of Opinion

4.4.1 Across our output as a whole, we must be inclusive, reflecting a breadth and diversity of opinion. We must be fair and open-minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument.

Personal View Content

4.4.30 Additionally, when personal view programmes and websites (for example, blogs) cover 'controversial subjects', especially those concerning matters of public policy or political or industrial controversy, we should:

- retain a respect for factual accuracy
- fairly represent opposing viewpoints when included
- provide an opportunity to respond when appropriate, for example in a prearranged discussion programme (See Section 6 Fairness, Contributors and Consent: 6.4.25 - 6.4.27)
- ensure that a sufficiently broad range of views and perspectives is included in output of a similar type and weight and in an appropriate timeframe.

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 and the programme team.

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

The Committee noted that the guideline on accuracy requires that content is well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The Committee noted too that output should not distort known facts, present invented material as fact, or otherwise undermine the audience's trust in the BBC's content. In relation to contributors, the Committee noted the guidance that sources of information and significant contributors should be clearly identified and their credentials be provided so that the audience is able to judge their status.

The Committee noted the guideline on impartiality requires output to be fair and open-minded, that it weighs material facts and gives due weight to the many and diverse areas of an argument. As the subject of the programme can be considered controversial, the Committee noted the guideline requirement that any serious allegations might require a right of reply in the programme.

Point 1 – whether the programme should have disclosed the commercial links between Professor Mark Pepys, University College London (UCL) and GlaxoSmithKline

The Committee noted how the programme introduced Professor Pepys:

“In 1998 the Royal Free became part of University College London, and shortly after that Professor Mark Pepys was recruited as the Head of the Medical School there. He was deeply aware of how even then this scandal was besmirching the hospital's name, and was determined to get to grips with it. His first move was to tell Andrew Wakefield and his colleagues to stop discussing the Lancet paper, and to embark on a much larger and thorough study to test their conclusions.”

The Committee noted too the areas covered in Professor Pepys' contributions to the programme, namely:

- Andrew Wakefield's alleged non-cooperation on a wider study to try to replicate the findings reported in the Lancet paper
- the Professor's view about what he considered inappropriate commercial activities being undertaken by Andrew Wakefield whilst he was employed at the Royal Free
- that as a result of Brian Deer's ongoing investigations, UCL is to hold a formal investigation into the allegations of scientific fraud in relation to the Lancet paper and other research conducted by Andrew Wakefield
- the Professor's defence of UCL's conduct in the affair.

The Committee noted the ECU's view that because the majority of Professor Pepys' contributions to the programme related to actions he took before the link between UCL and GSK, the link would not have a significant or material effect:

"listeners would not have judged his contribution in a materially different light if they had been informed of Professor Pepys' recent agreement with GSK."

The Committee noted too that according to the producers of *Science Betrayed*, Professor Pepys is not directly involved in the inquiry into the integrity of Andrew Wakefield's research which is currently being conducted by UCL.

The Committee noted the complainant's view that the programme ought to have made clear Professor Pepys' links with the MMR vaccine manufacturer GSK, regardless of when that arrangement began:

"(The ECU) does not think that disclosures in this or that context would make any difference to the listener, but I do, I am the listener and I do not want (the ECU) to make up my mind for me."

The Committee noted the complainant's citing of a House of Commons Select Committee report from 2005 which investigated the influence of the pharmaceutical industry. The report stated that considerable resources were invested by the industry into building long-term relationships with stakeholders.

The Committee noted the contents of a press release issued by UCL on 14 February 2011 announcing Professor Mark Pepys as the first of ten GSK "academic superstars". The press release said the aim of the scheme was to work with leading external medical researchers to create long term partnerships to develop medicines more cost effectively. The Committee noted that there did not appear to be any direct link between either UCL or Professor Pepys and the MMR vaccine produced by GSK.

The Committee decided the programme-makers had made a reasonable judgment that the current links between Professor Pepys and GSK were not relevant to the Professor's role in the earlier events about which he commented. In relation to the UCL inquiry now underway into Andrew Wakefield's research, the Committee was satisfied that Professor Pepys has no direct involvement in that inquiry. The Committee considered it relevant that the Professor's contribution to the programme mentioning the inquiry was purely factual: he noted that an inquiry was taking place, he did not prejudge any of the issues nor did he comment on what its conclusions were likely to be. The Committee was persuaded by the programme's argument that, had the link with GSK been mentioned, it might have had the effect of creating a controversy where there was none apparent. The Committee decided the programme had been accurate and precise about the Professor's role in the affair and the Committee was satisfied that, in choosing not to advise the audience of his current link with GSK, there was no evidence of any intent to mislead nor effect of misleading the audience. Accordingly the Committee did not uphold on this point.

Point 2 – whether the programme should have disclosed the commercial links between Fiona Godlee, the British Medical Journal and MMR vaccine manufacturers Merck and GlaxoSmithKline

The Committee noted the context and content of the BMJ editor's two contributions to the programme: firstly in describing the remit of the GMC hearing which resulted in Andrew Wakefield being struck off the medical register, and secondly her opinion on the conduct of the editor of the Lancet.

The Committee noted the nature of the relationship between two MMR vaccine manufacturers and the BMJ. A not-for-profit arm of Merck distributes an online training programme published by a BMJ group entity, BMJ Learning. GSK is one of a number of sponsors of the BMJ Group Awards. The Committee noted the programme team's view:

"In our judgement, these connections are sufficiently remote to preclude the possibility of any conflict of interest that might be material to this programme. As such, there was no need to discuss it."

The Committee noted the complainant's contention that these links should have been made clear in the programme, particularly given that it was the BMJ who initially published the recent round of allegations made by Brian Deer:

"... it is not clear why her (Fiona Godlee's) views on those matters could not conceivably be coloured by commercial interests too. But even if they were not the conflict should be reported, so that the context is transparent, that is the whole point about disclosure..."

The Committee was made aware that the BMJ published a series of articles by Brian Deer in January 2011, containing many of the same allegations that were made in the programme which is the subject of this complaint. The Committee noted that at the time, Fiona Godlee, the BMJ editor, wrote an editorial to accompany the Deer series of articles, in which she went beyond the findings of the GMC panel and stated she believed Andrew Wakefield to be guilty of scientific fraud. Her editorial also gave unequivocal support for the continued use of the MMR vaccine and the dangers of not vaccinating.

The Committee noted that the complainant in this appeal wrote also to the BMJ in the context of the editorial by Fiona Godlee. On that occasion the BMJ accepted that Ms Godlee should have declared the commercial link. On 11 March 2011 Ms Godlee wrote in the BMJ:

"...we should have declared the BMJ Group's income from Merck as a competing interest to the editorial ... that accompanied Brian Deer's series on the Secrets of the MMR scare. We should also, as you say, have declared the group's income from GSK as a competing interest in relation to these articles. We will publish clarifications.

"We didn't declare these competing interests because it didn't occur to us

to do so. We saw this series not as pro-MMR vaccine or pro-vaccination in general, but as against fraud and corruption in medical research. Having said this, the last line in the editorial is indeed explicitly supportive of MMR vaccination. This is in line with the BMJ's coverage since the MMR scare began and is in line with the evidence."

The Committee did not agree with the complainant's contention that any link should be mentioned, and that the audience should be allowed to decide whether it was relevant. The Committee said that the decision about what to include or not to include was rightly a matter of editorial judgement and was the kind of decision that programme makers were required to make all the time. The Committee accepted the complainant's point that the degree of influence pharmaceutical companies have on academic research is a valid debate, but not one that was required to be had in the context of the programme. The Committee agreed with the programme makers that the nature of the BMJ's relationship with Merck and GSK was sufficiently remote from the context and content of her contributions to *Science Betrayed* that disclosure of the links was not required on this occasion to ensure due accuracy.

Whilst the Committee noted that in a different context the BMJ had published a clarification noting those same competing interests, it concluded that the content of the BMJ editorial by Ms Godlee and her two contributions to *Science Betrayed* were wholly different. The Committee decided the BMJ's action was irrelevant to the consideration here. The Committee noted too that the programme had made clear in the script that the BMJ was the publisher of Brian Deer's most recent allegations, so equipping the listener to assess the weight to place on Fiona Godlee's contribution. Accordingly the complaint was not upheld on this point.

Point 3 – the programme should have disclosed that Brian Deer was the complainant in the General Medical Council inquiry convened to hear the case of professional misconduct against Andrew Wakefield

The Committee noted the complainant's allegation that Brian Deer was compromised by his role as the complainant in the case against Andrew Wakefield and that he was not therefore an objective source for the programme:

"It is a matter of record that Deer made a series of complaints and had an unavoidable vested interest in a successful prosecution. (The ECU) say it was aware of this although it has never been reported on the BBC."

The Committee noted the 2009 article in the Spectator by Melanie Phillips which was cited by the complainant¹:

"...since Deer's allegations sparked the General Medical Council case against Wakefield which would not have occurred without his involvement, he was effectively a principal player in the story he was reporting — a clear conflict of interest and breach of journalistic standards."

¹ <http://www.spectator.co.uk/melaniephillips/3362116/a-deer-in-the-headlights.shtml>

The Committee noted the numerous occasions in the programme where mention is made of Brian Deer's role:

"The General Medical Council inquiry was triggered by Brian Deer's investigations..."

"Brian Deer, a freelance journalist who through years of dogged investigation has unpeeled the layers of the biggest medical scandal in living memory."

"For most, it came down to a question of trust. Until investigative reporter Brian Deer waded in."

"Shortly before Brian Deer's allegations went public in the Sunday Times, he presented them to ... The Lancet."

"The shortcoming of the Lancet and the Royal Free's handling of the first wave of allegations were revealed over the next few years, as the General Medical Council aided by Brian Deer embarked on the longest and most expensive investigation in their history."

"But it doesn't end there. Brian Deer has continued to mine the paper trail at the GMC inquest. And he's gone on to produce a series of reports in the BMJ detailing other serious allegations of scientific misconduct."

The Committee noted the programme's response to the allegation:

"We considered this goes further than describing Mr Deer as simply the 'complainant' – it ensured that our listeners were aware that Mr Deer played a very significant role in initiating the process that found Andrew Wakefield guilty of such serious professional misconduct that he was struck off the medical register."

The Committee noted too that when the BMJ published Mr Deer's allegations in January this year, the section on competing interests beneath his articles stated²:

"BD's investigation led to the GMC proceedings referred to in this report, including the charges. He made many submissions of information but was not a party or witness in the case, nor involved in its conduct."

The Committee decided the programme made it absolutely clear who Mr Deer was, that he was an investigative journalist who had campaigned over a period of a number of years to draw attention to allegations about the competence and honesty of Mr Wakefield. The Committee decided listeners were given sufficient information to assess Mr Deer's comments in the context of his role in the events being described. Presentation of Mr Deer's credentials was both comprehensive and precise, such that the audience was able to assign due weight to Mr Deer's contribution as required by the guidelines. Accordingly the complaint was not upheld on this point.

² <http://www.bmj.com/content/342/bmj.c5347.full>

Point 4 - regarding the complainant's allegation that the programme had made a tenuous interpretation of the Lancet paper in respect of comments about access to GP notes and that Brian Deer had been wrong to accuse Andrew Wakefield of incompetence for his reliance on the use of the Red "baby books" as a source of a child's developmental history

The Committee noted the relevant section from Adam Rutherford's commentary:

Rutherford: In the original Lancet paper, Andrew Wakefield and his co-authors explicitly wrote that:

(actor's voice) "Developmental histories included a review of prospective developmental records from parents, health visitors, and general practitioners."

Rutherford: With access to the children's GP notes, Brian Deer found that autistic symptoms often did not arise as described in the paper. This was Andrew Wakefield's response to us when we put Brian Deer's allegation to him:

Wakefield: He took the general practitioner records, which were not available to us at the Royal Free, and he compared them with what was written in the Lancet. What was available to us at the Royal Free are the red books – that is the prospective developmental records from child health visitors who go to the home and assess children on a regular basis.

Rutherford: Brian Deer thinks that this is an extraordinary admission.

Deer: In the paper Wakefield says specifically that they had checked the children's developmental records – from parents, health visitors and GPs. Now he's saying something different – he's saying he checked their baby books – what are now called red books – they're books which are given out when children are born and they record vaccinations, admissions to hospital and other pieces of information in terms of specific events. An incompetent doctor – and we must remember that Dr Wakefield is not a paediatrician – an incompetent doctor would rely on children's baby books as evidence of prior normality because a health visitor would not put down their concerns over a child's development or possible anxieties... Only an incompetent doctor would rely on baby books to assess a child's prior normality. Anybody reading that paper would assume from what he said that he had gone back to GPs for their records. If Wakefield now says he relied on baby books then he's an incompetent doctor. If he holds them out, as he did in the Lancet paper, as being evidence that he'd obtained the developmental histories from parents, health

visitors and GPs then he's a dishonest doctor because he did not obtain that information.

The Committee noted the complainant's allegation that the programme "deliberately or inadvertently" misrepresented the Lancet paper: Mr Wakefield and his co-authors only ever intended to describe the red books, referred to by Mr Deer as "baby books". The Committee noted also the complainant's view that the red book is an important record, and described as such in the Department of Health pamphlet cited by the complainant:

"This is the child's main health record and should be kept safe."

The Committee also noted the wording quoted by the complainant from the NHS Choices website (complainant's emphasis):

"When you visit a clinic, **your GP** or a hospital healthcare professional will use the red book to record your child's weight and other measurements, vaccinations and other important health information. You can also add information yourself. It's a good idea to record any illnesses or accidents and details of any medicines your child takes."

The Committee noted the complainant's view that there had been "a tenuous and unwarranted reading of the Lancet paper", and that Brian Deer should have been challenged by the programme:

"To make out ... that Wakefield was dishonest and incompetent is surely neither honest or competent ... Am I alone in finding Mr Deer's contemptuous reference to 'baby books' deeply insulting?"

The Committee noted the following comment from the programme team:

"The interpretation is not tenuous; the two versions are at distinct odds, hence our editorial decision to include this point. Also Brian Deer did not directly accuse Dr Wakefield of incompetence. His statement was strongly qualified: 'If Wakefield now says ... then ...'. (The complainant) appears to be suggesting that we should have barred one of Dr Wakefield's chief critics from commenting on this new line of defence, which we find editorially indefensible."

The Committee also noted the ECU's view that the choice of what aspects of a story to include in a programme is a matter of editorial discretion: the programme included details of the allegation and also a rebuttal from Andrew Wakefield.

The Committee noted it was not within their remit to form an opinion on what the authors of the Lancet paper, writing in 1998, might have meant by a review of the "prospective developmental records from parents, health visitors, and general practitioners".

The Committee's view was that it was reasonable for the programme to include the allegations by Brian Deer in the form that it did. The Committee said the

allegations were expressed as Mr Deer's opinion of the red book as an authoritative source of a GP's conclusions about their patient's prospective development. It was clear that Mr Deer did not think this was a credible source on which to reach a reliable conclusion about the date of the onset of autistic symptoms, given that the closeness of the "date of onset" to the administration of the MMR vaccine was a central point in the Lancet paper.

The Committee agreed that the allegation that any doctor who relied on the red book in such circumstances was either dishonest or incompetent was Mr Deer's view and was not set out as the view of the programme.

The Committee decided Mr Wakefield was given adequate opportunity to state his view about the red book and why in his opinion it was a reliable record of a child's prospective development. The Committee considered it would have been preferable had Mr Wakefield's comment included a specific response to Brian Deer's implication that he had been incompetent or dishonest but the Committee did not think it was essential to ensure due accuracy.

In relation to the allegation that Mr Deer's criticism of the red book understated its value as a reliable health record, the Committee took the view that Mr Deer's criticisms were not about the Red Book per se, but about the role the book appears to have played in supporting the conclusions reached in the Lancet paper. The Committee said it was clear that it was the reliance by Mr Wakefield on the red book as evidence of "a child's prior normality" which Mr Deer was criticising. Accordingly, the Committee did not uphold the complaint on this point.

Point 5 – regarding the allegation that the programme did not adequately challenge the allegations made by Brian Deer that Andrew Wakefield had committed scientific fraud

The Committee noted the complainant's allegation that the programme placed too much reliance on Brian Deer and on his interpretation of source material. It noted the complainant's view that the transcript of the GMC fitness to practice hearing which disbarred Andrew Wakefield was six million words long and that programme makers would therefore not have been able to make a careful critical assessment.

The Committee noted the complainant's reference to an analysis of some of Brian Deer's claims which had appeared on an autism website; the writer of the analysis claimed to have gone back to the source and, according to the complainant, found Mr Deer's reading of the GMC transcript "to have been faulty at almost every point". But the Committee noted that the allegations in that case related to the series of articles by Brian Deer in the BMJ and not directly to the content in the programme which was the subject of this appeal. The Committee confirmed that its role was not to determine the accuracy of Brian Deer's allegations for his series of BMJ articles, its role was only to test the content of the programme. Nevertheless, the Committee noted the programme team's comments about the reliability of Brian Deer as a source:

"The allegations of scientific fraud were made in the British Medical Journal – one of the most prestigious and highly regarded medical journals in the

world... As with all the reputable scientific literature that we use as part of our jobs as science journalists – the papers published in the BMJ, including the three articles by Brian Deer have undergone the peer review process. It would be extremely unusual for us to cover stories about scientific or medical discoveries that have not gone through the peer review process... We were not simply reporting unsubstantiated claims made in non-academic, non peer-reviewed general press.”

The Committee noted too the complainant’s argument that any allegation of scientific fraud in relation to the data in the Lancet paper would have to be levelled against all twelve of the authors of the report and not just Andrew Wakefield, as none of his co-authors have ever repudiated the data.

The Committee noted that for the most part, allegations made in the programme had been challenged in the course of the GMC tribunal. The Committee noted that the tribunal has the same standing as a court of law, and its findings of fact were entitled to be relied upon by the producers of the programme.

The Committee noted two specific new allegations were made in the programme, the first was about the use of the red books (as dealt with in point 4 above). The second allegation was in this section of Adam Rutherford’s commentary:

“When he went back to the Royal Free’s records, Brian Deer found that the pathologist’s original reports indicated no serious gut inflammation in any of the twelve children – contrary to the central point of the Lancet paper.”

The Committee noted the complainant’s assertion that the pathologist referred to in Adam Rutherford’s commentary had contested Mr Deer’s reading of events in the columns of the BMJ. The Committee noted that the pathologist’s account of events as given to the BMJ accorded broadly with Dr Wakefield’s³:

“As to the severity of any pathology, there was a gradual awareness by those attending the regular clinicopathological conferences that we were identifying subtle changes in some of the mucosal biopsies from autistic children. Subtle does not always indicate insignificant.”

However, the Committee also noted the guidance from the independent editorial adviser who had read the original transcript of the doctor’s two days of evidence to the GMC hearing and was able to confirm that in her sworn testimony the doctor said that the original conclusions relating to the biopsies taken from those in the Lancet study, were not those that appeared in the final report. The Committee noted that in her evidence the doctor said she saw a draft of the Lancet paper before it was published and raised concerns at the time about how the pathology reports had been interpreted.

The Committee noted also the programme team’s response:

³ Susan Davies, BMJ 300410

http://www.bmj.com/content/340/bmj.c1127.full/reply#bmj_el_235073

"The histopathology was reported as one allegation of misconduct made by Deer ... We interviewed Dr Wakefield at length on the matter, the gist of his answer being that the initial histology findings (normal) were deficient in all cases:

'what they [Wakefield's colleagues] noticed very early on is that the pathologist - the routine pathologist - was missing disease.'

"We consulted an independent, trusted gastroenterologist (Professor Ingvar Bjarnason) ... who dismissed much of Wakefield's (and colleagues') account. In the end he was not interviewed for the programme, and we chose to summarise the issue in a single sentence rather than digress for several minutes."

The Committee was satisfied that the pathologist's evidence, given under oath, satisfactorily supported the programme's statement that the original reports indicated no serious gut inflammation in any of the twelve children.

However, the Committee noted the issue for the complainant was that the programme should have stated that the Lancet paper did not claim to have used the original conclusions: the Lancet conclusions were reached after a review of the original pathology reports had taken place and it was at that stage the results were reinterpreted and revised for publication. The Committee therefore considered whether this was relevant information that required to be in the programme in order for it to achieve due accuracy. The Committee decided that, while that additional information might have been helpful, it was not necessary. The Committee decided the response published in the BMJ from the original pathologist did not contradict the statement made in the programme; the transcript of her evidence from the GMC hearing was more relevant in this context. The Committee concluded the programme took adequate steps to reassure itself of the relevance and significance of the fact that the original pathology conclusions were not those contained in the Lancet paper. It did this by not only relying on the checks and balances inherent in the pre-publication peer review process which Brian Deer's BMJ articles had undergone, but also by consulting with Professor Bjarnason. This provided further corroboration that the programme was editorially justified in including the allegation in the form it did. The Committee also considered it relevant that in her evidence under oath the pathologist recalled that she had been concerned at the interpretation of the results when she saw a draft of the Lancet paper.

Finally, the Committee considered the complainant's overall allegation that the programme had been "sloppy, prejudiced and gullible" in relying on Brian Deer and his interpretation of source material.

The Committee noted that the majority of allegations made in the programme have been found proven by the GMC tribunal and that the only other specific allegations in the programme are made by Brian Deer, sourced to Brian Deer and clarified in the script where necessary as allegations rather than proven fact. The Committee noted that subsequent verification by the editorial adviser of relevant sections of the GMC tribunal transcripts supports the programme's confidence in their sources.

The Committee was satisfied that the allegations made in the programme were well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. Accordingly the complaint was not upheld on this point.

Point 6 – regarding the allegation that the programme had prejudged the case against Andrew Wakefield with a prejudicial opening, the general presentation of the evidence and the portrayal of Andrew Wakefield as the man behind the greatest medical scandal in living history

The Committee noted the complainant's assertion that the ECU had ignored the wider context of the programme in addressing his complaint:

"(the ECU) nowhere refers to the wider context of the programme, the tendentious title 'Science Betrayed', the voice of Brian Deer at the very opening beating the drum for the findings of the GMC hearing ... and Adam Rutherford's pronouncement that it was the 'biggest medical scandal in living memory' ... These are techniques of propaganda rather than balanced journalistic reporting, let alone science. (The ECU) repeatedly goes to some lengths to narrow the context of certain contributions to the programme in order to protect it from the claim of unbalance, but the primary context is the highly prejudicial one of the opening and Adam Rutherford's general presentation."

The Committee noted the programme team's response that at the time of broadcast Andrew Wakefield had been found guilty of serious professional misconduct after the longest and most expensive GMC hearing in its history.

The Committee noted that the programme makers had fully informed Andrew Wakefield about the content and scope of the programme and the context in which he was being interviewed, including notifying him of the title of the programme. The Committee noted the editorial adviser was able to verify this with reference to the email exchange between Mr Wakefield and the programme makers prior to broadcast.

The Committee noted that the opening of the programme, about which the complainant is particularly concerned, listed only those charges which had already been found proven by the GMC. The Committee noted too that the programme included Andrew Wakefield's response to the allegations in which he said that he rejected all the GMC findings. The Committee noted that whilst the GMC panel of inquiry did not look at the science of the study per se, it did reach numerous findings of fact which call into question the Lancet study as a piece of scientific research.

The Committee noted the impartiality guideline requiring that due weight be applied to content. The Committee considered this clause in the light of the recently published review of the accuracy and impartiality of science coverage on the BBC, authored by Professor Steve Jones. The Committee noted Professor Jones' recommendation that when making editorial judgements about impartiality there should be no attempt to give equal weight to opinion and evidence.

In this context the Committee agreed that, having regard to the findings of fact of the GMC (as referred to above) the programme was based on well sourced facts. At the same time the Committee considered the programme applied the concept of due weight correctly in giving appropriate space “to the many and diverse areas of the argument”. The Committee further decided that the programme had been fair and open-minded in its dealings with Andrew Wakefield and in the way it presented the allegations against him. Accordingly, the complaint was not upheld on this point.

Finding: Not upheld

Rejected Appeals

Appeals rejected by the ESC as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

Newsnight, BBC Two, 4 January 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Complaint

The complainant wrote to the BBC's Editorial Complaints Unit on 10 May 2011 saying he had been out of the country and had only recently viewed the *Newsnight* programme broadcast on 4 January 2011. The complainant said that he was aware that his letter was outside the 30 day period permitted for complaints, but said he did not think the BBC should ignore his allegations. The complainant raised a number of reasons as to why he considered an item relating to homeopathy had been biased against the practice of homeopathy. The complainant also made a number of allegations of misconduct regarding BBC staff involved in the programme and about influence from an external organisation, Sense About Science. The complainant specifically called into question the impartiality of the BBC producer who made the film.

The complainant alleged that the item on *Newsnight* was designed to influence the General Pharmaceutical Council in a misconduct case the complainant said had been brought by Sense About Science against a homeopathic pharmacy.

The BBC's Editorial Complaints Unit replied on 17 May 2011 to say that, as the complainant had pointed out, his letter fell well outside the period the BBC gives for lodging a complaint and that it would be inappropriate to change from the published process. There was an exchange of correspondence in which the ECU advised the complainant that he could raise issues about the conduct of BBC staff with the Head of Editorial Compliance and Accountability for BBC News.

The complainant contacted the Head of Editorial Compliance and Accountability for BBC News, asking her to investigate the questions raised about the conduct of certain BBC staff. She declined to investigate the complainant's concerns as the complaint had not been made within 30 days of the broadcast. The Head of Editorial Compliance and Accountability for BBC News said that she wanted to assure the complainant that if she had thought there was any evidence of serious professional misconduct to investigate, she would have overlooked the late timing of the complaint. However, she went on to say that she had made inquiries and was satisfied that the programme makers had acted in accordance with BBC Editorial Guidelines.

Appeal to the Trust

The complainant wrote to the Chairman of the BBC Trust on 18 July 2011, enclosing his original complaint and saying that, despite his serious allegations, his complaint had been rejected because of the 30 day deadline. The complainant said that he disagreed with the view of the Head of Editorial Compliance and Accountability for BBC News that the programme makers had acted in accordance with BBC Editorial Guidelines.

The Head of Editorial Standards for the BBC Trust wrote back to the complainant in response to his appeal against the decision of the Head of Editorial Compliance and Accountability for BBC News.

The Head of Editorial Standards explained that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She said that she had reviewed the case and in her view it should not proceed to the Editorial Standards Committee of the Trust for consideration on appeal.

The Head of Editorial Standards noted that the BBC has a published timeframe for making complaints, and the BBC website states:

“The process has three stages, designed to be straightforward to use and to enable us to address your concerns properly. You should normally make your complaint within 30 working days of the transmission or event and our aim is to respond within 10 working days.”

The Head of Editorial Standards noted that the complaint had been lodged outside this timeframe and added that, if there are exceptional circumstances, the BBC may accept a complaint outside the normal timeframe.

In considering whether the complainant had made out a case that there were such reasons she looked at his reasons for not complaining at the time and the seriousness of the issues he raised.

The Head of Editorial Standards noted that the complainant said he had been abroad on business and, having then viewed the broadcast, spent some time investigating the activities and background of the item’s producer.

The Head of Editorial Standards said that she did not consider that this amounted to exceptional reasons for the delay. She said that it was open to the complainant to inform the BBC that he had a complaint to make on the basis of what was broadcast and if necessary follow up with further information.

The Head of Editorial Standards then turned to the substance of the complaint. She said that there had been a number of other complaints about *Newsnight’s* film and discussion on homeopathy. As a result, the Editorial Complaints Unit had looked into the making of this film and the decisions over who should appear in the subsequent discussion thoroughly. She informed the complainant that she had previously decided other similar appeals had no reasonable prospect of success. The Head of Editorial Standards said that the complainant had not raised fresh information which had not been provided to the Trust on appeal previously.

The Head of Editorial Standards said that she did not consider that there was a reasonable prospect of success for the appeal that the complaint should be considered by the BBC Executive although it was lodged out of time. She did not propose to proceed with it.

The Head of Editorial Standards noted the complainant’s request for anonymity and confirmed that the appeal would be put to the Committee on this basis should he wish to challenge her decision.

The complainant replied asking the Trustees to review the decision of the Head of Editorial Standards not to proceed with the appeal.

The Committee’s decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the responses from the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted that the Head of Editorial Standards had considered whether there were good reasons for the delay, and whether the issues raised by the complainant were so serious as to make an exception to the usual requirement that a complaint is brought within 30 days. The Committee agreed that the reasons provided by the complainant for the delay did not constitute exceptional circumstances. The Committee noted that the complainant could have made his complaint within the 30 day timeframe and then followed it up with more information at Stage 1 of the complaints process. The Committee agreed that the complainant had not raised any issues not already covered in previous complaints regarding this *Newsnight* item. The Committee agreed with the Head of Editorial Standards' decision that there was not a reasonable prospect of success for the appeal that the complaint should be considered by the BBC Executive although it was lodged out of time.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Top Gear Middle East Special, BBC Two, 26 December 2010

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept her complaint on appeal.

Complaint

Stage 1

The complainant wrote to the BBC to complain that the *Top Gear Middle East Special* was inaccurate as it referred to the Golan Heights as being in Israel. The complainant said that the Golan Heights were in Syria but were illegally occupied by Israel. The complainant also believed that it was misleading to imply that Bethlehem is in Israel rather than in the Palestinian West Bank. The complainant was also concerned that there had been no mention of Palestine.

The complainant said that, by referring to the West Bank as "disputed", the programme failed to acknowledge that according to international law it is illegally occupied and known as the Occupied Palestinian Territories.

The complainant said in summary that she believed the programme to be misleading and she believed it demonstrated the BBC repeating the Israeli propaganda line.

The Executive Producer of *Top Gear* replied to the complainant saying that from the outset the programme wanted to acknowledge the delicate political situation in the Middle East without getting too bogged down in explaining the views of the particular sides in detail. He believed that taking the same approach as that of a news report would jar with the usual tone of *Top Gear*, and for that reason it had chosen to use short, neutral terminology when necessary. If any of the language lacked the detail that some viewers would have liked, he said it was only a result of the programme's desire to remain as apolitical as possible.

The complainant replied saying that the programme had implied that Bethlehem was in Israel and that this was not neutral. The complainant stated that Bethlehem is in the West Bank and the programme should have said so. The complainant said that all the other countries were named and asked why that was not the case with the West Bank, which she believed was the most important name to have been clearly positioned since the aim of the presenters was to reach Bethlehem.

The Executive Producer of *Top Gear* again replied, pointing out that at the top of the programme the three presenters introduced the basic premise of their journey - to travel from the East to Bethlehem in a two-seater sports car. On the studio map, Bethlehem was correctly shown to be within the West Bank. At this point presenter James May had made the first reference to the political situation in the Middle East by saying:

"...you see in order to go to Bethlehem, we had to drive through Israel and for political reasons the Israelis aren't very happy about cars from any of these countries coming across their border."

The BBC believed that from the outset, it had been clear that Israel was presented as being the final hurdle to reaching Bethlehem, rather than the final destination itself. The Executive Producer then re-stated that it was not appropriate to the style of *Top Gear* to go into the finer points of Middle East politics. He believed that while referring to the territory as "disputed" in a news programme might be inadvisable, to do so in an entertainment programme only implies that there are conflicting views on its status.

In response to the complainant's query about how the programme could avoid the West Bank, given that Bethlehem lies within it, the Executive Producer explained that the comment came at the part of the programme where the three had just passed through the border between Jordan and Israel. As the crow flies, the quickest route to Bethlehem would be to travel straight down the West Bank. The show had been advised against this, so at that particular point in the journey it made sense to avoid it. The Executive Producer said that he believed the use of contrasting shadings on the map shown during this voiceover clearly identifies the West Bank (and Bethlehem pinpointed within) as being separate from Israel.

Answering the complainant's concerns about the Golan Heights, the Executive Producer said that the presenter's remark that the region had been in Syria, but is now Israel, had been an attempt to reflect the fact that control had passed from one country to the other. He said the simplicity of the description had not been intended to lend legitimacy to either country's current claim to the land, and it did not imply that the arguments over the region were settled - the reference in the programme to minefields along the roadside had in fact suggested the opposite.

The complainant rejected these explanations and said in particular that the use of the word "disputed" suggested the BBC had been pandering to Zionist lobbying.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) stating that she had found the responses so far to be unsatisfactory.

The ECU noted that Israel unilaterally annexed the Golan Heights in 1981. The move was not recognised internationally and Syria still demands an Israeli withdrawal. Given these facts, the ECU did not conclude that the description used in the programme was materially inaccurate or misleading, bearing in mind that the requirement is for due accuracy.

In answering the complainant's allegations that the programme had given the inaccurate and misleading impression that Bethlehem is in Israel, rather than the Palestinian West Bank, and that the presenters said the crossing from Jordan to Israel was the final border crossing, thus implying that Bethlehem was in Israel, the ECU provided the complainant with copies of the map graphics used in the transmission.

The ECU said that, taking these various maps together, the West Bank was clearly differentiated from Israel, and Bethlehem was clearly marked inside the West Bank. It did not believe that viewers would have been materially misled.

On the question of the use of the phrase "final border crossing", the ECU believed it was clear from the context that this was a reference to the series of international borders that the presenters had crossed in their journey through Iraq. The ECU did not agree with the complainant's assertion that this would have implied that Bethlehem was in Israel rather than the West Bank, particularly bearing in mind the maps which had been used throughout the programme.

The ECU said that it did not believe the Editorial Guidelines would require an entertainment programme such as *Top Gear* to make the location of Bethlehem explicit in the way the complainant appeared to suggest.

The ECU did not agree that it was necessary for the programme to have the West Bank named on the map. As with its ruling on the location of Bethlehem, it believed that the various maps would have served to prevent the viewers being given a misleading impression.

The ECU noted the complainant's point that the West Bank had only been referred to in the context of the presenters being advised to avoid it for "political reasons" and that the presenters could not avoid the West Bank if they were visiting Bethlehem, which is in the West Bank. The ECU said that it was clear from the context that the presenter was referring to yet another occasion when the team found themselves travelling in the wrong direction "for political reasons". In this case the issue was whether the team could cross into the West Bank directly from Jordan or would have to travel into Israel first.

The ECU said that it was unable to conclude that in such circumstances, viewers would have been led to believe that Bethlehem was not in the West Bank - rather, that they would only have assumed that it was not possible for the presenters to enter the West Bank from Jordan "for political reasons".

The ECU then addressed the point that the West Bank was referred to as "disputed" when it should be described as illegally occupied. The ECU pointed out that under the 1993 Oslo Peace Accord, sections of the West Bank were handed over to the Palestinian Authority to administer. The permanent status of the West Bank is to be determined through negotiation between the two parties. Since at the moment there is no agreement on a lasting settlement, the ECU's view was that it was not materially misleading to describe the status as "disputed", bearing in mind the requirements for due accuracy in the context of an entertainment programme such as *Top Gear*.

The ECU ruling concluded by addressing the complainant's allegation that, taken together, the points raised were evidence of pro-Israel bias in the programme. The ECU did not agree that this was the case for the reasons already stated when dealing with the individual points.

The complainant replied to the ECU with a detailed critique of its reasoning. With regard to the guidelines on impartiality, the ECU responded noting that due impartiality meant balance had to be adequate and appropriate to the output, taking account of the subject and nature of the content and the likely expectation of the audience. Bearing this in mind, and the conclusion that there was not a breach of the guidelines on accuracy, the ECU said that it was not possible to conclude that the programme failed to achieve the necessary due impartiality in relation to the points the complainant had raised. The ECU also did not believe that there were grounds to conclude there was a breach of the guidelines on Harm and Offence.

Appeal to the Trust

The complainant appealed to the BBC Trust against the ECU ruling, stating that neither the programme producer nor the ECU had addressed her points. She said that she believed in particular that the programme's claim to have been non-political did not bear scrutiny, since not mentioning Palestine, not saying that Bethlehem is in the West Bank, referring to territories as disputed rather than occupied and describing the Golan Heights as part of Israel are all political statements in themselves and demonstrate bias towards Israel.

The BBC Trust's Senior Editorial Strategy Adviser replied to the complainant on behalf of the Head of Editorial Standards, explaining that the Trust does not adjudicate on every appeal that is brought to it and part of the role of the Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards had read the relevant correspondence and examined the programme in question and had concluded that the appeal did not have a reasonable prospect of success. She had

therefore concluded that it should not proceed to the Editorial Standards Committee of the BBC Trust.

The Senior Editorial Strategy Adviser explained the reasoning behind the Head of Editorial Standards' decision. The Head of Editorial Standards noted that the complainant had raised the same points in her appeal as at previous stages. She noted that the complainant did not feel that these points had been addressed but she said her view was that the Committee would disagree, given the nature of the explanations that had been given.

The Head of Editorial Standards said that the BBC's reasoning was clearly laid out against all the individual points raised by the complainant, and she listed them again by way of explaining how the editorial guidelines work.

With regard to the complaint about the Golan Heights, the Head of Editorial Standards noted that the ECU had provided the exact transcript of the relevant section:

“For political reasons, this was Syria and now it is Israel.”

The Head of Editorial Standards said that for the appeal to succeed on this point the Committee would need to conclude that the programme was materially misleading in the language and terminology used. The Head of Editorial Standards did not believe that, laid against the requirement in the editorial guidelines for due accuracy, this was the case.

With regard to the complaint that an “inaccurate and misleading” impression was given that Bethlehem is in Israel, the Head of Editorial Standards noted that the ECU had provided the complainant with copies of the maps used in the programme. The Head of Editorial Standards did not see anything in them to imply that Bethlehem is in Israel – the West Bank was clearly differentiated from Israel – and she said that the Committee would be most likely to concur that there is no case to answer on this point.

The Head of Editorial Standards noted that the complainant had also raised the description of “the final border crossing” as being from Jordan into Israel, implying therefore that there was no further border to be crossed (into the West Bank). The Head of Editorial Standards did not believe the Committee would draw the same inference as the complainant had done. The Head of Editorial Standards' view was that the Committee would be bound to take into account the maps shown on-screen which, taken together, provided the viewer with clear geographical references.

The Head of Editorial Standards believed that this would also be the case when considering the point about the absence of the name of the West Bank: in the context of the stated programme content it was not a requirement under due accuracy. The Head of Editorial Standards said that the use of the phrase “political reasons” may well have merited further explanation in a different sort of programme, but in this case that, taking into consideration the expectations of the audience, there was no case to answer.

Finally, with regard to the complainant's argument that there should have been more context included about the West Bank than the reference to it being “disputed”, the Head of Editorial Standards explained that the guidelines do not require it in a programme of this nature. These state that:

The BBC is committed to achieving due accuracy.

The term ‘due’ means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary. The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content. The requirements may even vary within a genre, so the due accuracy required of factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news.

The Head of Editorial Standards said that, since the programme is regarded as being factual entertainment – and since what was broadcast would most likely not be seen by the Committee to have been in any sense inaccurate in itself – the Head of Editorial Standards believed there would be no case to answer on accuracy.

The Head of Editorial Standards said that the same would apply to due impartiality, whose requirements are that:

The term 'due' means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

For the reasons listed above, the Head of Editorial Standards did not believe that the Committee would share the complainant's view or find any evidence that the BBC had been "pandering to the Zionist lobby" such as to admit an appeal.

The Head of Editorial Standards also tested the points against the Harm and Offence guidelines, but was of the view that they were not designed for, nor are relevant to, the points of the complaint.

The complainant wrote to ask that the Trustees review the decision of the Head of Editorial Standards not to proceed with the appeal. She said that the letter from the Senior Editorial Strategy Adviser had not addressed her points. In particular she said that, because the map showing the West Bank had not been labelled, viewers would have been misled. The complainant repeated her point that the reference to the final border being that from Jordan to Israel implied that there was no further border to get to Bethlehem.

The complainant took issue with the conclusion that, because the programme had not been found to be inaccurate by the BBC, it had not been biased. The complainant also repeated her belief that the complaint engaged the guidelines on Harm and Offence.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the complainant felt her points had not been answered by the BBC. The Committee also noted the Head of Editorial Standards' view that the individual points had been adequately dealt with by the Editorial Complaints Unit. The Committee agreed with the Head of Editorial Standards that, on each of the points regarding accuracy, the BBC had put forward arguments for concluding that the programme had been sufficiently accurate, given the context and audience expectations, to meet the requirements of the guidelines.

The Committee also agreed with the Head of Editorial Standards' view that in the absence of compelling evidence of any breaches of the accuracy guidelines, it was unlikely to find that there had been a breach of the impartiality guidelines.

The Committee noted the complainant's view that the programme should have been considered in relation to the harm and offence guidelines; however, it agreed with the Head of Editorial Standards that these guidelines were not intended to be used in such a context and were not relevant to the complaint.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

“Palestinians say Netanyahu speech will not bring peace” – BBC Online

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Complaint

Stage 1

The complainant emailed the BBC on 25 May 2011 to complain about the BBC Online article headlined “Palestinians say Netanyahu speech will not bring peace”. The complainant said that the article did not mention the numerous standing ovations or say enough about what was in the speech itself.

The Middle East editor of the BBC News website replied on 30 June 2011. He apologised for not replying earlier and explained that the full report of the speech had been on BBC Online the previous day, as had Jeremy Bowen’s television piece on the subject. He added:

“we did give appropriate coverage to what was an important speech. However, it is the nature of news that a story moves on, and after a period of time, it became the reaction to the speech, rather than the speech itself, that was the most newsworthy angle.”

Stage 2

The complainant emailed the Editorial Complaints Unit on 1 July 2011, saying that the first stage response had, on the face of it, been convincing but that he had been unable to find the article cited before making his complaint. He added that he thought that he had not been able to find the original article about the speech because it was under the “US” pages whereas the one he had read was under the “Middle-East” category.

A Complaints Director at the Editorial Complaints Unit replied, saying that he could see no breach of the editorial guidelines because:

“the fact that it was posted in the US and Canada section of the BBC News site would not lead to a lack of due impartiality. I also think that the choice of links to other articles and reports is a matter of legitimate editorial discretion (in the same way that the choice of which news events to cover is a matter of journalistic judgement for editors).”

A response from the BBC news online team explained that there was a policy of assigning coverage to the location where a reported event took place, but this would not affect its accessibility. The email concluded by rejecting any allegation of partiality in the coverage, adding that the BBC would expect the same non-partisan reporting of Middle Eastern issues no matter which part of the world the story originated.

The complainant replied to the ECU saying that the two articles, published in two parts of the news website, took opposing stances and that both were poor. He said that each article should be unbiased as readers do not have the time to trawl the website looking for other views. The complainant said that the video posted was irrelevant as people will not necessarily look at that.

The Complaints Director at the ECU replied, quoting the Impartiality guidelines. He did not uphold the complaint and explained that there were two reasons for this. Firstly the subject matter, he said, had been clearly identified in the headline and opening paragraph. It was about the Palestinian reaction to the speech. He said this was adequate

and appropriate and would not have misled readers. Secondly, he noted that the article did include a summary of the main points of the speech – which he quoted.

The Complaints Director added that it would have been better if there had been a direct link to the previous day's report on the speech itself but that there had been enough within the article in question to satisfy the requirements of due impartiality.

Appeal to the Trust

The complainant appealed to the BBC Trust on 16 August 2011. He said that his complaint was essentially that Mr Netanyahu's speech to Congress had not been reported in the Middle East part of the BBC website, and that he had therefore been unable to find it. The complainant alleged that the overall coverage of the speech in the Middle Eastern section of the website, which is edited independently from other sections of the website, was unbalanced.

The complainant noted that the ECU had conceded that it would have been better if there had been a link to the first article reporting the speech; however, he said there was no attempt to examine the implications of the decision not to include a link. The complainant alleged that this was a "deliberate act of censorship of bad news arising from an antipathy - whether conscious or otherwise - towards Israel".

The complainant said that the article itself was biased, if considered as the sole coverage of the speech in the Middle East part of the website, and that it did not, contrary to the editorial guidelines, give due weight to "events, opinions and main strands of arguments".

The complainant added that the article focussed exclusively on Palestinian opinion of the speech, ignoring Israeli opinion. The complainant said that the speech covered many issues which were not mentioned in the article in question, and that the sidebar only added to the lack of impartiality.

The BBC Trust's Head of Editorial Standards replied to the complainant, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said she had read the correspondence relating to the appeal, and the two articles referred to in the correspondence. She agreed with the ECU that it would have been better to have had a link between the separate news online articles (one in the Middle East section of the website and one in the US section). However, she noted that this did not mean the articles could not be accessed through a conventional search. She also said that there was enough content about the main points made by Mr Netanyahu in each article for a reader to understand both the speech and the response to it. The Head of Editorial Standards concluded that neither article could be considered biased, and that the complainant had not made a case for the Executive to answer in terms of a breach of the Editorial Guidelines. She said that she did not propose to put the appeal to the Editorial Standards Committee.

The complainant replied, requesting that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. He repeated his assertion that the article was biased, highlighting a quote from Mr Netanyahu's speech ("In Judea and Samaria, the Jewish people are not foreign occupiers") which he said had been omitted from the BBC's reporting of the speech. The complainant also said that the Head of Editorial Standards had not addressed his point that the Middle East section of the website must in itself be editorially independent.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the original article complained about.

The Committee noted that the complainant felt strongly that the article had breached the BBC's guidelines on impartiality in its approach to reporting Mr Netanyahu's speech. It also noted the quote he felt should have been included. The Committee also noted the views of the Editorial Complaints Unit and the Head of Editorial Standards that the article in question was reporting the reaction to the previous day's speech, and that there was enough content about the main points made by Mr Netanyahu in each article for a reader to understand both the speech and the response to it. The Committee agreed with the Head of Editorial Standards' view that the complainant had not made a case for the Executive to answer in terms of a breach of the Editorial Guidelines when considering each article independently.

The Committee noted the complainant's point that the Middle East section of the BBC website should be impartial in its own right. The Committee agreed that this was not the requirement. The requirement is for every item of BBC content to be duly impartial on its own unless explicitly linked to other content as part of a series. The Committee agreed that, while it would have been better for the two articles in question to have been linked to each other, the fact that they were not did not raise any issues with regard to the impartiality guidelines.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

The BBC's coverage of climate change

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Complaint

The complainant contacted the BBC with a number of complaints alleging bias in the coverage of climate change in specific output. In the course of the individual complaints the complainant contacted the BBC Trust to ask it to consider a complaint of general bias.

The BBC Trust's Head of Editorial Standards wrote to the complainant in October 2010 and May 2011 setting out how she proposed to deal with the complaint of general bias. She said that this could be heard once each individual complaint strand had been through stages 1 and 2 of the complaints process. The Head of Editorial Standards summarised the status of each of these strands:

1. Earth: The Climate Wars

The Head of Editorial Standards decided that this complaint did not qualify to be put forward to the Committee on appeal and she wrote to the complainant with the reason on 15 March 2010. He challenged her decision on 15 June 2010 following the publication of the ESC's decision not to uphold three other complaints against the same series. The Committee considered the challenge in July 2010 and agreed not to take this complaint on appeal.

2. Bias by omission

The Head of Editorial Standards explained in a letter to the complainant of 12 May 2010 that complaints of bias by omission are not considered on appeal by the ESC unless the Chairman considers that an exception should be made. In line with the process described in her letter, the complainant's correspondence was provided to the then Chairman of the ESC, and it was his view that there was not a case for an exception to be made.

3. BBC News at Six

The Head of Editorial Standards originally deemed that this qualified for consideration on appeal and the Trust appointed an editorial adviser to begin an investigation into the complaint. In the course of the investigation it became apparent that BBC management did not feel that it had addressed the complaint against this as a standalone item. The matter was therefore passed to the BBC's Editorial Complaints Unit (ECU), which sent its findings to the complainant on 14 July 2010. The complainant did not appeal to the Trust following the ECU's findings.

4. BBC Online, "The arguments made by climate change sceptics"

The complainant received a stage 2 response on 16 April 2011 and emailed the Trust on 22 April 2011 to say he would be appealing against it as part of his general bias appeal.

5. BBC Online, "Arctic warmest in 2000 years" and "Many hurricanes' in modern times"

This was passed back to BBC Information at Stage 1. Following their reply, the complainant escalated his complaint to the ECU. The final ECU response was provided to the complainant on 7 June 2010 and he appealed to the Trust on 27 June 2010.

In the Head of Editorial Standards' letter of 14 October 2010, she proposed that the complaint of general bias be taken forward to the ESC using the complaints which have

already had a stage 2 response from BBC management. The Head of Editorial Standards asked the complainant to submit his appeal on this basis, relating to strands 3, 4 and 5. She also said that, while the appeals regarding strands 1 and 2 had already been turned down by the Trust, the fact the complainant had raised them as part of his general complaint would be brought to the attention of the Committee. As a result, the Head of Editorial Standards suggested that the complainant may wish to raise strands 1 and 2 in the context of his overall appeal.

Appeal to the Trust

The complainant wrote to the Trust in July 2011 to ask the BBC Trust to consider his complaint of general bias, saying that the BBC has shown and continues to show persistent bias and lack of impartiality in relation to climate science and climate change reporting and programming. The complainant alleged that the BBC unduly favours reports which support the theory that anthropogenically produced CO₂ is causing dangerous/catastrophic global warming, or qualifies reports to give undue weight to this theory. He said this was particularly so in the reporting of science.

The complainant said that, while it is clear that climate change is occurring, it is the causes or degree of cause for climate change that many question. The complainant said that the science which does not directly support the man-made climate change consensus should be reported on in the same manner as the science which supports it.

The complainant included four attachments with his appeal, which he said: provided examples of the BBC's general bias when reporting climate change; and showed how the BBC could not demonstrate that there had been no bias in various reports/articles on climate change [raised with them as a result of the BBC Complaints Procedure.]

The complainant concluded by saying that he was concerned that the BBC is not giving a balanced view of the climate change debate.

The BBC Trust's Senior Editorial Strategy Adviser replied to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of the role of the Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She said that the Head of Editorial Standards had read the relevant correspondence and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee on appeal. The Senior Editorial Strategy Adviser set out the Head of Editorial Standards' reasons for this decision.

The Head of Editorial Standards noted the points the complainant had made in his previous correspondence to BBC Audience Services, to the ECU and to the BBC Trust.

The Head of Editorial Standards noted that the complainant wished his complaint to be seen in the round and that he believed there to be a general bias in the BBC's reporting of climate change and the science surrounding it.

She said that the BBC Trust was aware that some areas of the BBC's coverage of science had aroused controversy, including coverage of climate change. As a result, the Trust had commissioned Professor Steve Jones, Emeritus Professor of Genetics at University College London, to carry out an independent assessment of the impartiality and accuracy of the BBC's coverage of science together with content analysis from the Science Communication Group at Imperial College London.

The Head of Editorial Standards explained that the terms of reference for this review were that "...it will assess news and factual output that refers to scientific findings, particularly where the science is itself controversial and where it relates to public policy and political

controversy". It asked "...whether assertions about scientific theories are well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language." It was also asked to question "...whether the output gives appropriate weight to scientific conclusions including different theories and due weight to views expressed by those sceptical about the science and how it was conducted and evaluated."

The Head of Editorial Standards provided the complainant with a link to the published review⁴ and explained that, within this review, Professor Jones had examined the BBC's impartiality when covering global warming (page 66 - 72). She said that he noted the BBC has put plenty of effort – and resources – into its attempts to be impartial on this subject. She added that Professor Jones acknowledged that the issue of global warming in some ways shows how hard it is to achieve due impartiality in the treatment of science and he said it showed how the BBC in its attempts to do so may inadvertently have achieved almost the opposite. She noted that he had said that two decades ago there was a genuine scientific debate about the reality of climate change but he said that there is now general agreement that warming is a fact, even if there remain uncertainties about how fast, and how much, the temperature might rise. The Head of Editorial Standards noted that the complainant made a similar point in his correspondence. She said, however, that the complainant went on to argue that there is no consensus on what is causing global warming and, on this point, there is a marked divergence between his conclusion and that reached by Professor Jones.

She noted that Professor Jones said a 2008 survey to which thousands of Earth scientists responded found that 90 per cent agreed that temperatures had risen since 1800 and that 82 per cent consider that human activity has been significant in this. She noted that he said 96 per cent of specialists in atmospheric physics agreed with the first statement, and 97 per cent with the second. She noted that he acknowledged that truth is not defined by opinion polls but said that it is difficult to deny the consensus. The Head of Editorial Standards referred to Professor Jones' statement that, despite this consensus, the BBC continues to debate the evidence for and causes of climate change. She noted that he had said that the real discussion has moved on to what should be done to mitigate climate change and that BBC coverage has been impeded by what Professor Jones described as "the constant emphasis on an exhausted subject".

The Head of Editorial Standards noted that, as evidence of how the BBC could improve its coverage of climate change, Professor Jones pointed to a Cardiff University poll carried out last year which showed that one in seven among the British public said that the climate is not changing and one in five that any climate change was not due to human activity. He said fewer than half considered that scientists agree that humans are causing climate change. He said this divergence between the views of professionals versus the public may be seen as evidence of a failure by the media to balance views of very different credibility.

She noted that Professor Jones said he believes the BBC has been over-rigid in its application of the impartiality guidelines when reporting on the anthropogenic causes of climate change and, as a result, has failed to take in what he describes as the "non-contentious" nature of aspects of the climate change debate and the need to avoid giving "undue attention to marginal opinion".

The Head of Editorial Standards said that both the BBC Trust and the BBC Executive have accepted the broad conclusions of Professor Jones' independent review and agreed to build on the recommendations. She said that the BBC Executive has noted Professor Jones' concerns about the rigid application of "due impartiality" guidelines. In addition, it

⁴ http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/science_impartiality/science_impartiality.pdf

has proposed two specific measures to improve programme makers' understanding of these issues: a College of Journalism online training module on impartiality in science; and two seminars to be held in 2011/12 with scientists to debate current scientific issues and their coverage.

The Head of Editorial Standards added that, for its part, the BBC Trust has agreed with Professor Jones that "...there should be no attempt to give equal weight to opinion and to evidence". She said that the Trust has also supported the BBC Executive's observation that "due impartiality" in reporting science should be applied in different ways depending upon the nature and context of a story. It has said that appropriate, flexible use of these guidelines is essential and that it is important to consider factors such as individual remit and audience as well as the distinction between well-established fact and opinion. She explained that, in relation to the latter, the BBC Trust has said that programme makers must use their own, and draw on others', scientific knowledge in making this distinction. They must also clearly communicate this distinction to the audience. She noted that the BBC Trust has said that a "false balance" (to use Professor Jones' term) between well-established fact and opinion must be avoided. The Head of Editorial Standards noted that the Trust has said this does not mean that critical opinion should be excluded nor that scientific research should not be properly scrutinised.

As a result of this review into the impartiality and accuracy of BBC science coverage and its assessment of how the BBC has reported climate change, the Head of Editorial Standards said that she could not see that the appeal for a general review of impartiality in relation to climate science and climate change reporting and programming is appropriate or has reasonable prospect of success.

Finally, the Senior Editorial Strategy Adviser noted that the appeal did not specifically ask the ESC to investigate the handling of the complaint to date, but she said that she would like to make some comments on the progress of the complainant's appeal to the Trust. She said that she would like to acknowledge the time it had taken him to research and compile his appeal, which she said had been extensive, and the patience with which he had pursued it. She said that she felt the Head of Editorial Standards would like to reiterate the apology she made for delays which the complainant had experienced in progressing his appeal.

The Senior Editorial Strategy Adviser noted the complainant's suggestion that the Trust "give serious thought as to an appropriate process for handling such a general complaint". She said that she hoped that his concerns in this regard would be addressed in some measure by the fact that complaints handling is a matter that the Trust is currently keeping under close review. She said that, in his recent lecture to the Royal Television Society, the Trust's Chairman, Lord Patten, stated that the BBC needed a complaints system that was quicker and easier to understand, and announced his own governance review. She provided the complainant with a link to the results of the Trust's governance review⁵.

The complainant replied with a request that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant said that his complaint had been misinterpreted as being that theories other than anthropogenic global warming should be reflected in BBC output. He said that he had actually argued about non-reporting of science that questions the Anthropogenic Global Warming catastrophic view of climate, and that his argument was not about theories. The complainant also said that the review conducted by Professor Jones was not impartial and should not be used as a basis for rejecting his appeal.

⁵ http://www.bbc.co.uk/bbctrust/news/press_releases/july/bbc_governance.shtml

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 responses from the Editorial Complaints Unit and the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted the arguments put forward by the complainant in support of his allegation that the BBC is biased in its coverage of science in relation to climate change. It noted that none of the individual complaints brought against the BBC had been upheld at any stage of the process. The Committee also noted that the Head of Editorial Standards had quoted extensively from the Trust's review of science impartiality in relation to the BBC's coverage of climate change. The Committee noted the complainant's point that he was not arguing about coverage of specific theories but about the coverage given to science that does not support the AGW view.

The Committee noted the complainant's criticisms of the conclusions reached by the Trust's recent review of the accuracy and impartiality of the BBC's science coverage; however, it noted that the conclusions of the report had been accepted by the BBC and the Trust. The Committee agreed that the concerns raised by the complainant had been addressed by the review. The Committee therefore agreed with the Head of Editorial Standards' view that the appeal for a general review into impartiality in relation to climate science and climate change reporting and programming was not appropriate and did not have a reasonable prospect of success.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Use of the term “child porn”, BBC News Online

The complainant appealed to the Trust following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Complaint

Stage 1

The complainant contacted the BBC on 28 April 2011 to complain about the use of the phrase “child porn” in a BBC News Online headline. The complainant said that this was not an acceptable phrase as

“To suggest these are ‘porn’ implies both a mutual consent (non-existent) and legality, (again, non-existent).”

The complainant said this was an offensive expression and was not used by the child protection agencies.

BBC News replied, agreeing that “indecent images” might be a better term but adding:

“in headlines - where the number of characters we can use is limited – ‘child porn’ is a widely-understood term and can be used as long as the story itself spells out the nature of the material or offence.”

The complainant contacted the BBC again in June 2011 regarding another article which had the headline “Norfolk minister Philip Hilstop sentenced over child porn”. The complainant said this was both offensive and trivialising. He said that neither the courts nor the child protection agencies used this term and that he would like the BBC to stop doing so and to amend its style guide accordingly.

The BBC responded saying that, it understood the complainant’s preference for use of the term “indecent images” as a suitable description. BBC News Online thought it acceptable to use the expression “child porn” in headlines as long as the story itself spelt out the nature of the material or offence. The response said that the style guide is refreshed periodically and that the complainant’s comments would be borne in mind.

Stage 2

The complainant escalated his complaint to the BBC’s Editorial Complaints Unit on 28 June 2011, saying he had complained several times about the use of the term “child porn” and asking to see the BBC’s policy on this. He repeated his view that the term is offensive, and said that it has implications of having “child porn stars”, implies mutual consent and a business interest, and trivialises and legitimises the offences as related to art. The complainant said the term in law is “indecent photographs or films of children” and that other media and the child protection agencies do not use the term “child porn”.

The complainant repeated his statement that the BBC should review its style guide to reflect this.

The Head of the Editorial Complaints Unit replied on 7 July 2011. He said he would be considering specifically the second article the complainant had mentioned but that any finding might be expected to have general application. He said that he intended to consider the complaint as being about misleading content under the Accuracy guideline.

The Head of the ECU then responded substantively, saying that he had understood the complainant to be objecting to the use of the term on the grounds that it diminished the severity of the crime and implied consent or voluntary participation. However, the Head of the ECU said he had checked a number of sources and definitions and did not find

support for that view. He added that the principle that children could not give informed consent also militated against this view. The Head of the ECU concluded that for this reason he could not uphold the complaint.

The complainant replied, asking the Head of the ECU to respond to the specific points in the complainant's first communication with him. The complainant asked the Head of the ECU to consult the links he enclosed and reconsider his decision.

Having visited the sites suggested by the complainant, the Head of the ECU said he agreed there was evidence some people found the term "child porn" offensive. He apologised for not specifically addressing each of the points the complainant had made originally but said this was because he thought them all a subset of the complaint as he had summarised it. He mentioned an Editor's Blog by Mary Hockaday⁶, written in 2007, which addressed the very point the complainant was making and said he hoped this reassured the complainant that these matters were kept under consideration.

Appeal to the Trust

The complainant wrote to the BBC Trust on 21 August 2011, saying he had persuaded a number of media outlets to stop using the term "child pornography" or "child porn" and he hoped the BBC would stop doing so likewise.

The complainant said that "victims of this crime find this a deeply offensive term to use" and that "Paedophiles will always try to justify their actions to others". The complainant's third reason was that:

"The actual crime, as detailed in the UK sexual offences act 2003, is 'taking or making an indecent photograph of a child'."

The complainant said that taken in literal context, the words "child" and "porn" do not go together. He stated that a number of child protection agencies – such as the National Society for the Prevention of Cruelty to Children, the Internet Watch Foundation, the Child Exploitation and Online Protection Centre, and Phoenix Chief Advocates – state that this is the incorrect way of referring to these images; primarily on the basis that it trivialises the crime committed.

The complainant noted that terms and language that are deemed acceptable change over time. He asked the Trustees to review the material and links he had attached and to conclude that the term should not have been or continue to be used by the BBC.

The BBC Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of the role of the BBC Trust's Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards had read the relevant correspondence, and the articles in question, and had concluded that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the BBC Trust.

The Senior Editorial Strategy Adviser informed the complainant of the Head of Editorial Standards' reasons for her decision.

She said that the Head of Editorial Standards understood that this is a matter the complainant felt very strongly about. She explained that in general the BBC is not

⁶ http://www.bbc.co.uk/blogs/theeditors/2007/12/choice_of_phrase.html

expected to ban specific words or phrases. In the case of the phrase “child porn”, the Head of Editorial Standards believed the BBC was correct in the position it had explained to the complainant; that this is a phrase that is well understood by the public and that they are likely to appreciate that it signifies an act of abuse.

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards understood that for some people this is a particularly offensive term and acknowledges that the BBC should be sensitive to that.

The Senior Editorial Strategy Adviser noted that the complainant had been directed to the Head of the Newsroom’s blog, and had included a link to it in his appeal. She said that the Head of Editorial Standards’ view was that the piece was thoughtful and explained the BBC’s view and the continued use of the phrase.

The Senior Editorial Strategy Adviser noted that the headline on the article originally complained about had been changed to read, “Former West Yorkshire PC jailed for child sex offences”. She also noted that the second article included a very clear explanation of what was meant by the phrase used in the headline:

“A Methodist minister from Norfolk has been given a four-month jail sentence suspended for two years after admitting possessing indecent images of children.”

She explained that the Head of Editorial Standards therefore did not believe that there was a reasonable prospect of success for the appeal and did not propose to put it to the ESC.

The complainant replied with a request for the Trustees to review the decision of the Head of Editorial Standards not to proceed with his appeal.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the complainant felt very strongly that the term “child porn” should not be used by the BBC, and it noted his reasons for this view. The Committee also noted the Head of Editorial Standards’ statement that the BBC is not expected to ban specific words or phrases. The Committee noted that the Head of the BBC’s Newsroom had addressed the issue raised by the complainant in her blog. The Committee was satisfied that the BBC had demonstrated that it was sensitive to the offence that the use of the phrase could cause, and that, while the BBC would not enforce a ban on the use of the word, it had removed it from the headline of the article about which the complainant originally complained and that context was given in the second article. The Committee agreed that there was not a reasonable prospect of success for this appeal.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

***Newsnight*, BBC Two, 15 February 2011**

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Complaint

Stage 1

The complainant contacted the BBC on 16 February 2011 regarding a *Newsnight* item on Workfare which included a film presented by Professor Lawrence Mead and a studio discussion. The complainant described Professor Mead as a right-wing academic, saying that he had been sent to Liverpool by *Newsnight* "...in an attempt to back up his and the UK coalition government's reactionary theories on Welfare claimants".

The complainant argued that Professor Mead's theories had not worked when put into practice in the US state of Wisconsin, as the programme had implied. The complainant said that nobody in the *Newsnight* items had sought to challenge Professor Mead on his record or his beliefs, nor noted the strong opposition by some academics and practitioners to his theories.

The complainant alleged that the group of benefit claimants who were interviewed in the film were reluctant to argue vigorously against Professor Mead, because if they disagreed with him on camera it would signify their refusal to accept any job offered and could lose them their entitlement to benefits.

The complainant also alleged that the follow-up studio discussion, chaired by the presenter Jeremy Paxman and involving Professor Mead and Chris Grayling, the Minister of State at the Department of Work and Pensions, further demonised the unemployed and benefit payments. The complainant said that the discussion did not include a substantive alternative voice. The complainant requested information as to who had financed the filming trip to Liverpool.

BBC Audience Services replied on 1 March 2011, noting that Professor Mead had been a key architect of many "welfare-to-work" schemes in the USA, including a very influential scheme in the state of Wisconsin and where, it stated, the number of people on welfare was cut by ninety per cent. His work had also been a big influence on British Government policy and the Welfare Reform Bill.

BBC Audience Services said that the programme had commissioned an authored film by Mr Mead to see how his views might be received in a British city with British welfare recipients. During that film, there were views from unemployed people and benefit claimants who agreed with Mr Mead's assertion "that the existing welfare system and economic structures unwittingly discouraged work and the seeking of employment, whilst passively making claimants benefit-dependent". The report had made it clear that a number of factors had contributed to the current situation, "the overarching element being the welfare system itself".

BBC Audience Services said that the BBC had made it very clear that the views expressed in the piece were Mr Mead's views and not those of *Newsnight*. The response also stated the BBC belief that the programme had robustly challenged Mr Mead in the discussion after his film. BBC Audience Services said that part of *Newsnight's* remit is to air and challenge controversial views, especially when those views have such a key influence on British policymakers.

The complainant said that he was unsatisfied with the reply as it had not dealt with the main issues raised, which were centred around a lack of balance in the *Newsnight* items.

The complainant repeated his view that the programme had endorsed “without question” Mr Mead’s claims.

The complainant also rejected the BBC’s statement that Professor Mead’s views had been robustly challenged, and argued that there were many people who could have been asked to appear whose expertise would have been useful as a counterbalance to Mr Mead’s views.

The complainant again asked about the funding of the trip, arguing that how the BBC spends its money is an important issue for licence fee payers. BBC Audience Services advised the complainant that the complaint should be pursued with the Editorial Complaints Unit at Stage 2 of the process.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit on 18 May 2011. The ECU wrote to the complainant on 28 June 2011, noting that the guidelines do not prohibit the expression of a particular viewpoint “on a controversial subject” provided that it is clearly signposted and that a range of other views is expressed. It then pointed out that both the film introduction and the fact that Professor Mead provided the voiceover made clear that the perspective being pursued was his.

The ECU said that the programme had, in fact, acknowledged that a range of views and criticisms of Professor Mead’s approach existed and this had been reflected in the programme.

The ECU then pointed to three occasions when the *Newsnight* reporter accompanying Professor Mead had challenged his views – and a further three examples from the film where participants had expressed doubts about his approach.

The ECU acknowledged that this did not constitute a detailed critique of his approach – but said that this was not a guideline requirement. By including contrary views, the film had not breached the guidelines on impartiality nor on the expression of personal views.

In assessing the second part of the complaint – the studio discussion – the ECU agreed that the inclusion of a further interviewee able to debate the implications of welfare reform would have added depth to the discussion. This, however, was not a guideline requirement provided the presenter challenged both of the interviewees who had been invited.

It was the belief of the ECU that this had been done and they quoted a number of examples from the discussion. The ECU did not agree that it was necessary for the interviewer to have a detailed knowledge of welfare reform and Workfare – only that the discussion was balanced and fair. In focussing on the coalition government proposals rather than Professor Mead’s work, it did nonetheless challenge him on his views – and although a further contribution might have added depth, the programme as broadcast was not so imbalanced as to constitute a breach of the BBC standards on impartiality. The ECU said that it was not in its remit to investigate the question of who had paid for the filming trip.

Appeal to the Trust

The complainant wrote to the Trust on 16 July 2011 to express his dissatisfaction at the complaints process. He said it was unacceptable that the ECU could agree that a further interviewee would have helped the discussion – yet fail to uphold the original complaint.

The complainant asked that the Trust look again at the complaint, which he summarised as the BBC paying “hundreds of pounds” to bring Professor Mead to this country and give

him the freedom on television to propagate his ideas on welfare. The complainant repeated his view that the programme failed to set up a studio discussion in which Professor Mead's ideas were rigorously tested and that *Newsnight* had broadcast a discussion between Professor Mead and Chris Grayling in which only one side of the argument was tested with any vigour.

The Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards. She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of the role of the Trust's Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She said that the Head of Editorial Standards had read the relevant correspondence and watched the items in question and had concluded that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust. The Senior Editorial Strategy Adviser explained the reasons for the Head of Editorial Standards' decision.

The Head of Editorial Standards noted that the complainant had suggested in his appeal letter that the ECU had been wrong to fit the appeal into the BBC's Editorial Guidelines. However, as the BBC's published procedures make clear, that is the usual method by which editorial complaints are assessed. The Head of Editorial Standards said that the Editorial Standards Committee (ESC) would be bound to take the appeal on that basis too – not least because the points raised do indeed fall within the relevant guidelines, namely those covering Impartiality and covering contributors expressing contentious views.

On the subject of contentious views, the Head of Editorial Standards quoted what the BBC Guidelines stipulate:

4.4.8 Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed. When dealing with 'controversial subjects' this should be clearly signposted, should acknowledge that a range of views exists and the weight of those views, and should not misrepresent them.

She said that, in terms of this guideline, when considering the admissibility of the appeal, she would need to consider whether or not that signposting was clear and whether it was also clear that there was a range of views on the topic.

On the issue of signposting, the Head of Editorial Standards noted that the introduction made it clear that Professor Mead had been asked by the BBC to test his views against the current unemployment situation in Liverpool. The Head of Editorial Standards also noted that shortly after the film began, Professor Mead made clear that he was making a case for reform. Thus, both he and the programme had set out the context of the film.

The Head of Editorial Standards added that the film, by meeting people in Liverpool and then gathering together a group of those affected to discuss the issue of benefits being directly linked to employment, did clearly allow for the expression of different views. The extent of institutional unemployment, and the number and nature of the jobs available for those who might be required to take them up, were discussed. The accompanying BBC journalist also interjected on three occasions to challenge Professor Mead's views.

The Head of Editorial Standards clarified that the Trust's remit is not to suggest to the BBC what might have been included in a programme – but to judge whether what was broadcast conformed to the guidelines. Taking the two aspects of the broadcast, the film and the studio discussion, the Head of Editorial Standards noted the complainant's suggestion at Stage 1 that Professor Mead's thesis and track record in Wisconsin should have been examined more thoroughly and, in the appeal, that any debate on *Newsnight*

should have been made “taking into account all sides of the workfare argument”. However, noting how the studio discussion was conducted, the extent to which both participants were challenged in their views (as outlined in the Stage 2 response), and the expression of different views within the film, the Head of Editorial Standards did not believe there was a failure to achieve due impartiality.

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards had also considered the context and signposting of the two items – namely that the BBC was testing Professor Mead’s views as they might apply to the United Kingdom. The Head of Editorial Standards noted that, according to the guidelines, there was no necessity to include a different political voice, provided that the Professor’s views had been challenged and a range of voices heard. The Head of Editorial Standards was satisfied that this was the case in this programme.

The Head of Editorial Standards was also satisfied that the *Newsnight* audience would be able to distinguish between a reporter-led film and one made by a specialist contributor and would be able to draw their own conclusions following this piece.

Overall therefore the Head of Editorial Standards did not believe the appeal had a reasonable prospect of success and did not propose to put it to the Committee.

The complainant replied with a request for the Trustees to review the decision of the Head of Editorial Standards not to proceed with his appeal.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted the Head of Editorial Standards’ view that the programme and Professor Mead had set out the context of the film. The Committee agreed that there had been clear signposting of a controversial view and that it was also clear there was a range of views on the topic.

The Committee noted that in his challenge to the Editorial Standards Committee’s decision the complainant had said that the focus of his complaint was the studio discussion following the film. The Committee noted the complainant’s view that this discussion was unbalanced because it lacked a contributor who was opposed to Professor Mead’s views. The Committee noted the complainant’s view that the interviewer was not able to challenge Professor Mead’s views because he lacked a detailed knowledge of the issues under discussion.

The Committee noted the ECU’s view that the inclusion of a further interviewee able to debate the implications of welfare reform would have added depth to the discussion but that this was not a guideline requirement provided the presenter challenged both of the interviewees who had been invited. The Committee noted that the ECU had quoted a number of examples from the discussion where they believed this had been done. The Committee agreed with the Head of Editorial Standards’ argument that, noting how the studio discussion was conducted, the extent to which both participants were challenged in their views (as outlined in the ECU’s response), and the expression of different views within the film, there was no case that there had been a failure to achieve due impartiality in the item as a whole.

The Committee agreed with the Head of Editorial Standards’ reasons for concluding that the appeal did not have a reasonable prospect of success.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Panorama: Death in the Med, BBC One, 16 August 2010

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

This appeal concerns the *Panorama* programme *Death in the Med*, a programme in the weekly current affairs series *Panorama*. *Death in the Med* was broadcast on 16 August 2010 on BBC One. It relates to the boarding at sea by Israeli commandos of the Mavi Marmara, which was part of a flotilla attempting to break Israel's naval blockade of Gaza. Nine activists on board the Mavi Marmara, the largest ship in the flotilla, were killed and more than 50 passengers and nine Israeli soldiers were injured.

The Committee adapted its usual editorial appeals process for appeals regarding *Death in the Med* to consolidate and consider together all appeals concerning *Death in the Med* that were received before 5pm on 10 December 2010. The Committee adopted this approach to ensure that appeals regarding *Death in the Med* were dealt with in a fair and efficient manner. The Committee considered together 19 appeals concerning *Death in the Med* (the "Consolidated Appeal") and published its finding on those 19 appeals on the BBC Trust website on 19 April 2011.

The complainant's appeal was submitted to the Trust after 10 December and was not part of the Consolidated Appeal. The complainant asked the Committee to review the Head of Editorial Standards' decision not to proceed with his appeal.

Stages 1 and 2

The complainant contacted the BBC on 20 August 2010 to complain about *Death in the Med*. The complainant was not satisfied with the correspondence that he received from the BBC at Stage 1 of the complaints process. On 13 November 2010, the complainant sent a letter of complaint to the Editorial Complaints Unit of the BBC (the "ECU"). The ECU summarised the complaint as follows:

- (a) The programme failed to give due consideration to the central issue raised by the incident, namely whether the 9 members of the flotilla who were shot dead by the Israeli Defence Force (the "IDF") were lawfully killed. It was this central issue which provoked so much concern internationally and led to a UN inquiry.
- (b) The programme failed to air the view that the Israeli action was criminal from the outset and that the members of the flotilla were acting lawfully from the outset. It is reasonable to expect a documentary dealing with an incident of this nature to air a range of views on the lawfulness of what took place.
- (c) The programme was not justified in presenting what purported to be a conclusive account of what took place, taking into account: the brevity of the programme; the complexity of the incident and the number of people involved; the lack of evidence that all potential witnesses had been interviewed; the lack of evidence that all footage had been viewed, listened to and checked for authenticity; the lack of consideration of forensic evidence; and the failure to consider the outcome of other enquiries.
- (d) It was stated as fact at the end of the programme that most of the medicines taken by the flotilla were out of date. This assertion was clearly made in the context of questioning the motivation of the organisers of the flotilla. The preoccupation of the programme with the question of the motive of the flotilla was itself evidence of bias.

(e) The theme of the programme throughout involved questioning the motivation of those involved in the flotilla. The programme did not at any time question the motivation of the IDF attacking a boat presenting no immediate threat on the high seas with loaded firearms and shooting nine people dead.

The ECU concluded that the programme had not breached the Editorial Guidelines. The ECU set out the reasons for its decision in a letter to the complainant dated 20 December 2010.

Appeal to the Trust

The complainant appealed to the Trust after 10 December 2010 (the complainant's letter of appeal was dated 30 December 2010). Therefore, the complainant's appeal was not considered as part of the Consolidated Appeal. As explained above, the Trust published its finding on the Consolidated Appeal on 19 April 2011 on the Trust's website.

The Head of Editorial Standards reviewed the complainant's appeal and wrote to the complainant on 16 August 2011 to explain why she did not propose to put the appeal before the Committee for its consideration. The issues raised in the complainant's appeal and the reasons why the Head of Editorial Standards did not propose to put the complainant's appeal before the Committee for its consideration are summarised below.

1. Out of date medicines

(a) The programme's description of aid on board the Mavi Marmara

Out of date medicines

The complainant stated that the "programme repeats without question misleading Israeli propaganda regarding the provision of 'out of date medicines'".

The Head of Editorial Standards explained that the Committee had considered the allegation that the programme should not have dismissed the medicines as out of date in Point AQ of the Consolidated Appeal (pages 106 - 108 of the Committee's finding on the Consolidated Appeal). In the Consolidated Appeal, the Committee decided that the commentary stating that two thirds of the drugs were out of date was well sourced and based on sound evidence. Further, in its finding on the Consolidated Appeal, the Committee considered that the reporter had first-hand evidence that some of the drugs were out of date, which was supplemented by an interview with a reliable source (page 107 of the Committee's finding on the Consolidated Appeal). In relation to Point AQ of the Consolidated Appeal, the Committee had concluded that there is verifiable evidence that the donation of out of date drugs is a serious problem for Gaza (pages 107 -108 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards considered that given the Committee's conclusion in the Consolidated Appeal that the programme had not breached the Editorial Guidelines in relation to Point AQ, this aspect of the complainant's appeal concerning "out of date" medicines did not have a reasonable prospect of success.

Usable medical equipment

The complainant suggested that the programme could have pointed out that "much of the medical equipment was usable and useful to the inhabitants of Gaza".

The Head of Editorial Standards referred to Point AR in the Consolidated Appeal which concerned the allegation that the programme failed to mention the valuable items which were impounded by the Israelis and that by highlighting the out-of date medicines it suggested the rest of the aid was worthless (pages 108 - 110 of the Committee's finding on the Consolidated Appeal). In relation to Point AR, the Committee considered that the

programme accurately described some of the aid on board the flotilla (mobility scooters, hospital beds and medicines, two thirds of which the reporter said she had found to be out of date). However, the facts show that this was just a tiny proportion of a consignment which had consisted of thousands of tons of aid, including large quantities of much-needed building materials. As a result, the Committee concluded that the programme was not clear and precise in its presentation of the full extent of the aid on board the flotilla (page 110 of the Committee's finding on the Consolidated Appeal). Accordingly, the Committee decided there had been a breach of the Editorial Guidelines on accuracy in relation to Point AR. The Committee apologised for the breach of the Editorial Guidelines in relation to Point AR on behalf of the BBC (page 11 of the Committee's finding on the Consolidated Appeal). As the Committee upheld a breach of the Editorial Guidelines on accuracy in relation to the description of aid on board the flotilla, the Head of Editorial Standards took the view that it would not be proportionate and cost effective to put this aspect of the complainant's appeal concerning accuracy before the Committee for its consideration.

In its finding on the Consolidated Appeal, the Committee noted that it did not consider that its decision regarding accuracy undermined either the impartiality of the programme or the conclusion reached by the programme, i.e. that the attempt to breach the blockade was not really about bringing aid but was a political move designed to put pressure on Israel and the international community. Therefore, the Committee concluded that there was no breach of the Editorial Guidelines on impartiality in relation to Point AR. Given the Committee's decision on the Consolidated Appeal, the Head of Editorial Standards explained that she did not consider that this aspect of the complainant's appeal concerning whether the description of aid had breached the Editorial Guidelines on impartiality had a reasonable prospect of success.

(b) Aims of the flotilla

In his letter of appeal, the complainant said that the programme "repeats without question Israeli propaganda regarding the provision of 'out of date medicines'" in order to support a central thesis of the programme regarding the aims of the members of the flotilla.

The Head of Editorial Standards referred to the Committee's conclusion on Point M of the Consolidated Appeal concerning the allegation that the programme misrepresented the humanitarian aims of the flotilla (pages 37 - 39 of the Committee's finding on the Consolidated Appeal). In the Consolidated Appeal, the Committee decided the statement at issue in Point M (i.e. the statement that "At the end of the day the bid to break the naval blockade wasn't really about bringing aid to Gaza") was well sourced, based on sound evidence, presented in clear, precise language and avoided unfounded speculation. The Committee decided that there was no insinuation that political aims were not honourable or right nor that these were not legitimate and there was no impression given that the humanitarian aims were not sincere (page 39 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards noted that the Committee had concluded that there was no breach of the Editorial Guidelines on accuracy or impartiality in respect of Point M in the Consolidated Appeal. Given the Committee's conclusions on Point M of the Consolidated Appeal, the Head of Editorial Standards concluded that this aspect of the complainant's appeal concerning the aims of the flotilla did not have a reasonable prospect of success.

(c) Context

In his letter of appeal, the complainant stated that the programme “does not attempt to explain the context in which the flotilla considered it important to take medical supplies to Gaza”. Also, the programme does not explain that the “Israeli blockade has resulted in the population of Gaza being collectively deprived of much needed items”.

The Head of Editorial Standards commented that in the Consolidated Appeal the Committee did not consider the specific point in the complainant’s appeal regarding the context in which the flotilla sought to take medical supplies to Gaza. However, the Committee did consider whether the programme had misrepresented the humanitarian aims of the flotilla (Point M of the Consolidated Appeal, pages 37 - 39 of the Committee’s finding on the Consolidated Appeal). In the Consolidated Appeal, the Committee also considered whether the programme should have stated that the blockade and siege of Gaza is illegal in Point A of the Consolidated Appeal (pages 13 - 15 of the Committee’s finding on the Consolidated Appeal). The Committee decided that the inclusion of that information was not essential to understanding the story, which was about the specific event of the boarding of the Mavi Marmara. The Committee concluded it was not required that the programme should include this information to achieve due accuracy (page 15 of the Committee’s finding on the Consolidated Appeal). The Committee decided that, as there is no definitive legal ruling on the blockade, it was not necessary, in order to achieve impartiality, for the programme to have reflected the widespread international criticism of the manner in which Israel was operating the blockade (page 15 of the Committee’s finding on the Consolidated Appeal).

The Head of Editorial Standards commented that in light of the Committee’s conclusions in its finding on the Consolidated Appeal (in particular, the Committee’s conclusions concerning Points A and M of the Consolidated Appeal), this aspect of the complainant’s appeal did not have a reasonable prospect of success.

(d) Opportunity to comment

In his letter of appeal, the complainant wrote that the ECU did “not address the failure by the presenter to give anyone from the flotilla the opportunity to comment on the Israeli slur regarding the ‘out of date’ medicines. This is despite the fact that she saw fit to obtain the views of the Israelis and of the unnamed UN official. This is an egregious example of bias and unfairness in the programme”.

The Head of Editorial Standards noted that in the Consolidated Appeal, the Committee did not specifically consider whether it was necessary to give anyone from the flotilla the opportunity to comment on the description of the medicines on board the flotilla as “out of date”. However, the Committee did consider the description of medicines on board the flotilla as “out of date” in Point AQ of the Consolidated Appeal (pages 106 - 108 of the Committee’s finding on the Consolidated Appeal). The Head of Editorial Standards explained that in the Consolidated Appeal, the Committee decided that the commentary stating that two thirds of the drugs were out of date was well sourced and based on sound evidence. Further, in the Consolidated Appeal the Committee concluded that the programme was duly impartial and duly accurate overall (Point AY, pages 117 - 119 of the Committee’s finding on the Consolidated Appeal).

Given the Committee’s conclusions in its finding on the Consolidated Appeal, in particular in relation to Points AQ and AY, the Head of Editorial Standards did not consider that there was a reasonable prospect of success for this aspect of the complainant’s appeal.

(e) Background information

In his appeal, the complainant referred to the “Shelf Life Extension Programme” and WHO guidelines to support his arguments regarding out of date medicines. The Head of

Editorial Standards said that, given the Committee's conclusions on Point AQ of the Consolidated Appeal, she did not consider that there was a reasonable prospect that the Committee would find that there was a breach of the Editorial Guidelines in relation to the description of medicines on board the flotilla as "out of date".

The Head of Editorial Standards pointed out that in relation to Point AQ of the Consolidated Appeal (pages 107 -108 of the Committee's finding on the Consolidated Appeal), the Committee acknowledged a point made by one of the complainants that the reporter was unnecessarily pessimistic, given that a study by the Food and Drug Administration in the United States had found that some drugs are still usable 15 years after expiry. However, in the Consolidated Appeal, the Committee concluded that there is verifiable evidence that the donation of out of date drugs is a serious problem for Gaza. Based on both the World Health Organisation interview for the programme, and from information in the Al Jazeera broadcast (which was independently researched by the editorial adviser for the Consolidated Appeal), the Committee concluded that it was clear that Gaza lacks the facilities to dispose of medicines that are deemed unfit for use. Interviews with professionals involved in healthcare in the territory suggest that drugs beyond their expiry date are disposed of, and therefore in the context of the situation in Gaza they can be considered "useless" (pages 107 -108 of the Committee's finding on the Consolidated Appeal). Also, in relation to Point AQ of the Consolidated Appeal, the Committee noted that the editorial adviser had viewed the transcript of an on-the-record interview with Mahmoud Daher of the World Health Organisation in Gaza, which was conducted for the Panorama programme but not used. In the interview Mr Daher says the out of date medicines are a problem because there are no facilities in Gaza to dispose of them safely, some items that were sent are needed but others are not. He highlighted the need for better coordination (page 107 of the Committee's finding on the Consolidated Appeal).

(f) Israeli viewpoint

In his appeal, the complainant alleged that the programme adopted an Israeli viewpoint on the value of the medicines on board the flotilla. The Head of Editorial Standards concluded that, although the substantive point raised in the complainant's appeal was addressed in the Consolidated Appeal, the Committee did not discuss the specific allegation regarding whether the programme adopted an Israeli viewpoint on the value of medicines in the Consolidated Appeal. In support of his allegation, the complainant referred to material on the IDF website. The Head of Editorial Standards noted that the programme did not use the IDF material the complainant referred to, nor did it conduct any IDF interviews on the subject of the aid. Further, the Head of Editorial Standards commented that in the Consolidated Appeal the Committee considered the evidence for the presenter's conclusions and decided they were well sourced. The Head of Editorial Standards said that it did not appear that the programme relied in any way on Israeli sources for the section on aid. As a result, the Head of Editorial Standards said that she did not consider that this aspect of the complainant's appeal had a reasonable prospect of success.

2. Not addressing the motivation of the Israelis

(a) Motives of the Israeli Government and the IDF

In his appeal, the complainant stated that "a central theme of the programme involves questioning the motivation of members of the flotilla. The programme does not give similar consideration to the equally relevant question of the motivation of the Israeli Government and of the IDF (Israeli Defence Force)". In particular, the complainant said

that the programme did not contemplate the possibility that the “real driver of events on the day is the visceral hatred by the IDF of anyone who challenges their authority”.

The Head of Editorial Standards noted that in its finding on the Consolidated Appeal, the Committee decided that although the programme did not spell out that Israel too had political aims, i.e. to prevent the convoy reaching Gaza, the programme did not breach the Editorial Guidelines on impartiality (Point M, pages 37 - 39 of the Committee’s finding on the Consolidated Appeal). Further, the Committee considered that the programme made it clear that Israel’s stated aim in enforcing the blockade was to prevent weapons reaching Gaza and control the amount of cement and steel allowed into Gaza in case they were used to make weapons and bunkers (page 39 of the Committee’s finding on the Consolidated Appeal). The Head of Editorial Standards did not consider that this aspect of the complainant’s appeal concerning Israel’s aim in enforcing the blockade had a reasonable prospect of success.

The Head of Editorial Standards also referred to Point S of the Consolidated Appeal. Point S concerned the allegation that the manner in which nine of the passengers were killed is fundamental because of what it might say about the motivation of the IDF, yet there was no mention of the preliminary autopsy findings (pages 55 - 59 of the Committee’s finding on the Consolidated Appeal). The Committee decided the information about the volume and nature of the gunshot wounds detailed in the preliminary autopsy reports gave a fuller picture of the manner in which the Israelis killed nine people and the level of force deployed by the Israeli commandos (page 3 of the Committee’s finding on the Consolidated Appeal). The Committee concluded that the programme had breached the Editorial Guidelines on accuracy in relation to Point S of the Consolidated Appeal. The Committee apologised for the breach of the Editorial Guidelines in relation to Point S on behalf of the BBC (page 11 of the Committee’s finding on the Consolidated Appeal). The Head of Editorial Standards noted that she did not consider that it would be cost effective and proportionate to put this aspect of the complainant’s appeal concerning the motives of the Israelis before the Committee for its consideration in as far as it relates to the inclusion of information from the preliminary autopsy reports.

The Head of Editorial Standards explained that the Committee concluded that the programme had not breached the Editorial Guidelines on impartiality by not including more information from the preliminary autopsy reports (Point S, page 59 of the Consolidated Appeal). Therefore, the Head of Editorial Standards said that she did not consider that a complaint that the programme breached the Editorial Guidelines on impartiality by not including more information from the preliminary autopsy reports had a reasonable prospect of success.

In addition, the Head of Editorial Standards noted that in relation to Point AY of the Consolidated Appeal, the Committee decided the programme contained timely and insightful revelations into what happened on the Mavi Marmara. *Panorama* presented new material which demonstrated that the explosive combination of poor Israeli military intelligence and operational strategy coupled with a core group of activists intent on violently resisting the Israeli assault, resulted in nine activists being killed and dozens of serious injuries. The Committee decided it was editorially justified for the programme to focus on exploring this new evidence and not to reflect in any detail other equally important aspects of the wider story (pages 117 - 119 of the Committee’s finding on the Consolidated Appeal). As a result, the Head of Editorial Standards said that she did not consider that the argument that the programme should have focussed more on the motivation of the Israelis had a reasonable prospect of success.

Given the Committee’s decisions on Points M, S and AY of the Consolidated Appeal, the Head of Editorial Standards concluded that she did not propose to put the aspect of the

complainant's appeal concerning the motivations of the Israelis before the Committee for its consideration.

(b) Examples of Israeli behaviour

In his appeal, the complainant lists some examples of incidents which "illustrate the ruthless approach taken by Israel when dealing with opponents", for example, the death of Rachel Corrie, the large and disproportionate number of civilian deaths in the attack on Gaza and the attack on a Jewish boat (the Irene).

The Head of Editorial Standards noted that in relation to Point AY, the Committee decided it was editorially justified for the programme to focus on exploring new evidence and not to reflect in any detail other equally important aspects of the wider story (page 119 of the Committee's finding on the Consolidated Appeal). Further, the Head of Editorial Standards commented that in the Consolidated Appeal the Committee decided that it was not necessary to state that the blockade was illegal to comply with the Editorial Guidelines on accuracy. The Committee decided that the inclusion of information concerning the legality of the blockade was not essential to understanding the story, which was about the specific event of the boarding of the Mavi Marmara (Point A, page 15 of the Committee's finding on the Consolidated Appeal).

Given the Committee's conclusions in its finding on the Consolidated Appeal, the Head of Editorial Standards explained that she did not consider that the complainant's argument (that past Israeli behaviour would be relevant, or that this should have been addressed as part of this very specific programme) had a reasonable prospect of success.

3. Other matters

In addition, in his letter of appeal, the complainant asked the Trust to take into account other points that he made in his letter to the ECU. These included the following points (a), (b) and (c) below.

(a) The legality of the actions of the IDF and the legality of the actions of the flotilla

Legality of the actions of the IDF

In his letter of complaint to the ECU, the complainant said that the programme should have addressed the legality of the actions of the IDF, in particular whether nine activists on board the Mavi Marmara were lawfully killed.

The Head of Editorial Standards referred to Point B of the Consolidated Appeal concerning the allegation that the legality of the IDF's interception, boarding and takeover of the flotilla was a core issue and should have been more fully explored (pages 15 - 17 of the Committee's finding on the Consolidated Appeal). In relation to Point B, the Committee decided that the omission of detail on the legality of the interception did not amount to a breach of the Editorial Guidelines on impartiality. Such an omission would only constitute a breach if the effect of excluding the information might alter a viewer's perception of the issue under discussion and that this was not the case in this instance (page 16 of the Committee's finding on the Consolidated Appeal). The Committee concluded that it was unnecessary for the programme to have dealt with the legality or otherwise of the interception apart from to reflect, as it did, that Israel stands accused of breaking international law (page 17 of the Committee's finding on the Consolidated Appeal). In reaching its decision on Point B, the Committee noted that a complainant thought it a core issue, because viewers were not told that a lawful defence of an unlawful act could involve using reasonable force. The Committee concluded that there was no breach of the Editorial Guidelines on accuracy or impartiality in relation to Point B.

Therefore, the Head of Editorial Standards considered that this aspect of the complainant's appeal concerning the legality of the IDF's actions did not have a reasonable prospect of success.

Legality of the actions of the flotilla

The complainant also argued that the programme should have addressed the legality of the actions of the flotilla, for example whether any force used by the flotilla was in self defence.

The Head of Editorial Standards noted that in the Consolidated Appeal the Committee did not specifically address whether: (i) the programme should have stated if the nine activists on board the Mavi Marmara were lawfully killed; or (ii) the programme should have stated if the actions of the activists on board the flotilla were legal or not.

The Head of Editorial Standards pointed out that in relation to Point O of the Consolidated Appeal, the Committee considered the allegation that the programme did not say that the Israelis shot anyone dead (pages 42 - 43 of the Committee's finding on the Consolidated Appeal). The Committee decided that it would have been clear to *Panorama* viewers that it was the Israelis who had killed nine people and wounded 50 others. The Committee did not agree that the language used implied the Israelis' role was less active than was the case. The Committee noted that the programme-makers focussed on providing new information concerning the events on the Mavi Marmara. There had already been considerable coverage of events on the Mavi Marmara, and substantial imagery from the night was already in the public domain along with allegations that Israel had used disproportionate force (page 43 of the Committee's finding on the Consolidated Appeal).

Further, the Head of Editorial Standards referred to Point AE of the Consolidated Appeal, which concerned the allegation that the programme did not clearly set out the sequence of events on the ship; the footage exaggerated violence by the activists and underplayed the nature and ferocity of the Israeli attack (pages 83 - 87 of the Committee's finding of the Consolidated Appeal). In its finding on the Consolidated Appeal, the Committee concluded that the programme showed clearly that the ship was boarded in international waters, that the activists were armed with improvised weapons, that they suffered disproportionate casualties and that the majority of the passengers were peaceful people on a humanitarian mission to deliver aid and to draw attention to the blockade on Gaza. The Committee concluded that the viewer would be clear that the events on the Mavi Marmara occurred after the Israelis had initiated military action, but at the same time what was largely a peaceful protest had a dimension that had not been fully explored prior to the *Panorama* broadcast. In explaining the new angle to the story it was inevitable that the programme focussed on the core group and that as a result the recounting of the broader story of what happened was not as comprehensive as the complainants would have liked. But the Committee decided that all main views and perspectives were reflected and that in legitimately choosing to focus on a specific aspect of the issue, opposing views were not misrepresented (page 87 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards also referred to Point AY of the Consolidated Appeal (pages 117 - 119 of the Committee's finding on the Consolidated Appeal). In its finding on the Consolidated Appeal, the Committee decided the programme contained timely and insightful revelations into what happened on the Mavi Marmara. *Panorama* presented new material which demonstrated that the explosive combination of poor Israeli military intelligence and operational strategy coupled with a core group of activists intent on violently resisting the Israeli assault, resulted in nine activists being killed and dozens of serious injuries. The Committee decided it was editorially justified for the programme to

focus on exploring this new evidence and not to reflect in any detail other equally important aspects of the wider story (page 119 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards concluded that, in light of the Committee's conclusions on the Consolidated Appeal, she did not consider that this aspect of the complainant's appeal had a reasonable prospect of success (i.e. whether: (i) the programme should have stated if the nine activists on board the Mavi Marmara were lawfully killed; or (ii) the programme should have stated if the actions of the activists on board the flotilla were legal or not).

The Head of Editorial Standards explained that in the Consolidated Appeal, the Committee concluded that the programme breached the Editorial Guidelines on accuracy in relation to Point S of the Consolidated Appeal (pages 55 - 59 of the Committee's finding on the Consolidated Appeal). The Committee decided the information about the volume and nature of the gunshot wounds detailed in the preliminary autopsy reports gave a fuller picture of the manner in which the Israelis killed nine people and the level of force deployed by the Israeli commandos; the inclusion of some reference to the preliminary autopsy findings would have enabled the programme to achieve due accuracy as required by the Editorial Guidelines (page 59 of the Committee's finding on the Consolidated Appeal). The Head of Editorial Standards considered that it would not be cost effective or proportionate for the Committee to consider a complaint concerning whether or not the programme should have included information from the preliminary autopsy reports.

(b) Series of programmes

In his letter of complaint to the ECU the complainant said that steps were not taken to broadcast a series of programmes to ensure that a full range of views is aired concerning the legality of the Israeli action. The Head of Editorial Standards noted that in the Consolidated Appeal, the Committee decided that the programme was duly impartial and duly accurate overall. However, the Committee did conclude that the programme had breached the Editorial Guidelines on accuracy in relation to Points S and AR and the programme had breached the Editorial Guidelines on impartiality in relation to Point AI. The Committee apologised for these breaches on behalf of the BBC (page 11 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards explained that the Editorial Guidelines allow the BBC to achieve impartiality over a series. However, as the Committee agreed in the Consolidated Appeal that *Death in the Med* was duly impartial it is unnecessary to seek to achieve impartiality over a series. Therefore, the Head of Editorial Standards took the view that this aspect of the complaint did not have a reasonable prospect of success.

(c) Conclusive account of what took place

In the complainant's letter to the ECU, he said that the programme was not justified in purporting to be a conclusive account of what took place taking into account: the brevity of the programme; the complexity of the incident and the number of people involved; the lack of evidence that all potential witnesses had been interviewed; the lack of evidence that all footage had been viewed and listened to and checked for authenticity; the lack of consideration of the forensic evidence; and failure to consider the outcome of other inquiries.

The Head of Editorial Standards noted that in the programme Jeremy Vine said "With several inquiries underway *Panorama's* [presenter] has important new evidence from both sides to piece together the real story - for the first time". The Head of Editorial Standards referred to Point AY of the Consolidated Appeal. In its finding on Point AY of the Consolidated Appeal, the Committee decided the programme contained timely and

insightful revelations into what happened on the Mavi Marmara. Panorama presented new material which demonstrated that the explosive combination of poor Israeli military intelligence and operational strategy coupled with a core group of activists intent on violently resisting the Israeli assault, resulted in nine activists being killed and dozens of serious injuries. Further, the Committee decided it was editorially justified for the programme to focus on exploring this new evidence and not to reflect in any detail other equally important aspects of the wider story (page 119 of the Committee's finding on the Consolidated Appeal).

(i) Length of the programme, complexity of the incident and number of people involved

The Head of Editorial Standards noted that as demonstrated throughout the Committee's finding on the Consolidated Appeal, the Committee was aware of the length of the programme, the complexity of the incident and the number of people involved. In its finding on the Consolidated Appeal, the Committee concluded that *Death in the Med* was an original, illuminating and well researched piece of journalism. It had achieved exceptional access to key players from both the Israeli and the activists' side. Voices were heard that had not previously spoken and in presenting their story *Panorama* performed a valuable public service (page 119 of the Committee's finding on the Consolidated Appeal).

Therefore, the Head of Editorial Standards did not consider that this aspect of the appeal concerning whether the programme presented a conclusive account of what took place taking into account the brevity of the programme, the complexity of the incident and the number of people involved had a reasonable prospect of success.

(ii) Lack of evidence that all potential witnesses had been interviewed

The Head of Editorial Standards referred to Points E, AN, AO, AP and AY of the Committee's finding on the Consolidated Appeal. The Committee did not uphold a breach of the Editorial Guidelines in relation to any of Points E, AN, AO, AP and AY of the Consolidated Appeal.

In relation to Point E of the Consolidated Appeal, the Committee considered whether the programme should have heard firsthand from the ordinary citizens of Gaza (page 20 of the Committee's finding on the Consolidated Appeal). The Committee concluded that the programme was focussed on a specific issue – the boarding of the Mavi Marmara – and that it had deployed a proper use of editorial discretion in deciding who to interview and how to cover the issue of bringing relief to the people of Gaza (page 20 of the Committee's finding on the Consolidated Appeal).

In relation to Point AN of the Consolidated Appeal, the Committee considered whether the programme should have interviewed Hanin Zoabi who was an eye-witness to the events on the Mavi Marmara and Sarah Colborne of the Palestine Solidarity Campaign who was also on the ship (pages 102 - 103 of the Committee's finding). The Committee concluded that there was no compelling reason to broadcast an interview with either of these two people in this programme and that the programme-makers were properly making use of their editorial discretion in deciding who to interview and which interviews to transmit (page 102 of the Committee's finding on the Consolidated Appeal).

In relation to Point AO of the Consolidated Appeal, the Committee considered an allegation concerning the programme's failure to interview any British passengers (pages 103 - 104 of the Committee's finding on the Consolidated Appeal). The Committee decided that the BBC is required to be objective and even handed in its approach to a subject, and in its use of interviewees. The Committee decided that there was no evidence that this was not the case here and that there was a proper exercise of editorial

discretion in the selection of interviewees and that their nationalities had not been as important an editorial consideration as what they had witnessed on the night (page 104 of the Committee's finding on the Consolidated Appeal).

Finally, in relation to Point AP of the Consolidated Appeal, the Committee considered the allegation that the programme failed to mention or to interview anyone from any of the other boats in the flotilla (pages 105 - 106 of the Committee's finding on the Consolidated Appeal).

In light of the conclusions reached in the Committee's finding on the Consolidated Appeal, particularly in relation to Points E, AN, AO, AP and AY of the Consolidated Appeal, the Head of Editorial Standards did not consider that this aspect of the appeal (concerning whether there is sufficient evidence that all potential witnesses had been interviewed) had a reasonable prospect of success.

(iii) Forensic evidence

The Head of Editorial Standards noted that the programme had breached the Editorial Guidelines on accuracy in relation to Point S of the Consolidated Appeal (pages 55 - 59 of the Committee's finding on the Consolidated Appeal). The Committee concluded that "in the absence of clear video footage of anyone being shot, material from the preliminary autopsy reports would have given a broader picture and added to the programme's description of how the activists died" (page 3 of the Committee's finding on the Consolidated Appeal). The Committee apologised for this breach of the Editorial Guidelines on behalf of the BBC (page 11 of the Committee's finding on the Consolidated Appeal). The Head of Editorial Standards considered that it would not be cost effective or proportionate for the Committee to consider whether the programme breached the Editorial Guidelines on accuracy in relation to forensic evidence.

The Head of Editorial Standards explained that the Committee concluded that the programme had not breached the Editorial Guidelines on impartiality in relation to Point S. Therefore, the Head of Editorial Standards considered that this aspect of the complaint concerning the Editorial Guidelines on impartiality did not have a reasonable prospect of success.

(iv) Extent of footage viewed and its authenticity

The Head of Editorial Standards referred to Point AC of the Consolidated Appeal (pages 77 - 82 of the Committee's finding on the Consolidated Appeal). Point AC concerned the allegation that the programme created the impression that the Israelis had handed over all the footage to *Panorama*, it did not explain that the Israelis confiscated all recordings made by activists and selectively chose what to release. In relation to Point AC of the Consolidated Appeal, the Committee considered that the audience would not have been misled into thinking that Israel had released all the material in their possession. The Committee considered that as a substantial amount of footage used in the programme did not come from the Israelis and had not been censored by them in any way, the programme fulfilled the requirements in the Editorial Guidelines by labelling and explaining the provenance of the material it used. There was no evidence that the material used in the programme was unrepresentative of what had been filmed that night. The Committee did not consider the programme omitted a material fact in not highlighting that Israel had confiscated all the material it found, nor was it a material fact (in the context of the programme) that Israel may not have released all the footage in its possession (pages 81 - 82 of the Committee's finding on the Consolidated Appeal). The Committee concluded that there was no breach of the Editorial Guidelines in relation to Point AC. Given the Committee's decision in relation to Point AC of the Consolidated Appeal, the Head of Editorial Standards explained that she did not consider that this

aspect of the appeal concerning the extent of the footage viewed by the programme makers and the authenticity of that footage had a reasonable prospect of success.

(v) Other inquiries

The Head of Editorial Standards noted that, as explained in pages 11 - 13 of the Committee's finding on the Consolidated Appeal, the UNHRC report, the Turkel Commission report and the Turkish Government's Commission of Inquiry report were all published after the *Death in the Med* programme was broadcast. *Death in the Med* was broadcast on 16 August 2010. The UNHRC report was published on 27 September 2010, the Turkel Commission report was published on 23 January 2011 and the Turkish Government Commission of Inquiry published its report on 11 February 2011.

The Head of Editorial Standards noted that in Point AS of the Consolidated Appeal, the Committee considered whether the programme makers acted with unseemly haste in screening the programme before inquiries had taken place (pages 110 - 111 of the Committee's finding on the Consolidated Appeal). The Committee concluded that it was the role of the BBC and the programme makers to screen a topical current affairs programme in a timely manner. The editorial and creative direction of the BBC including scheduling was a matter for the Director-General and the programme makers who reported to him as long as the Editorial Guidelines were not breached (page 111 of the Committee's finding on the Consolidated Appeal). The Committee decided that the programme had not breached the Editorial Guidelines in relation to Point AS.

Further, the Head of Editorial Standards referred to the Committee's discussion of the UNHRC report in the Committee's finding on the Consolidated Appeal. The Committee noted that there may have been valid reasons why *Death in the Med* and the UNHRC report each reached different conclusions about some of the events. The UNHRC had no first-hand access to anyone from the Israeli side, as Israel refused to cooperate with the inquiry. It was also not clear whether the UNHRC Mission spoke to any of the official representatives of the IHH, which the programme identified as the key party (in addition to the Israelis) in relation to the events of 31 May. Further, the UNHRC Mission had a different remit from *Panorama*. The terms of reference of the UNHRC Mission were to examine violations of international law, including human rights law. In addition, the UNHRC did not have the space limitations of a 29 minute programme; the UNHRC report is the equivalent of eight *Panoramas* in length (page 12 of the Committee's finding on the Consolidated Appeal).

The Head of Editorial Standards acknowledged that, although the programme could not take account of the findings of a report not yet published, the Committee had noted in its finding on the Consolidated Appeal that the editorial adviser considered that the UNHRC's conclusions and the reasoning behind them might help illuminate points raised in the Consolidated Appeal. The Committee's attention was therefore drawn to the UNHRC report as appropriate (page 12 of the Committee's finding on the Consolidated Appeal). Likewise the programme makers could not take account of the findings of Israel's Turkel Commission, which were published at the end of January 2011. Therefore the Committee was not asked to test the points raised in the Consolidated Appeal against evidence contained in the Turkel Commission report. However, the Committee's attention was drawn to passages in the Turkel Commission's report where, as with the UNHRC, it was felt the Committee might benefit from some additional background (page 12 of the Committee's finding on the Consolidated Appeal). Further, the editorial adviser prepared a note on the Turkish Government's Commission of Inquiry report, which contained supplementary background information. It was noted by the Committee where relevant during its discussion of the issues raised in the Consolidated Appeal (page 13 of the Committee's finding on the Consolidated Appeal).

The Committee's decision

On 8 September 2011, the complainant sent a letter to the Trust to ask the Committee to review the Head of Editorial Standards' decision not to proceed with his appeal. In reaching its decision the Committee took account of: the complainant's letter of complaint to the ECU; the response the complainant had received from the ECU at stage 2 of the complaints process; the complainant's letter of appeal to the Trust; an email from the complainant dated 10 January 2011 concerning the process for handling his appeal and a response from the Trust Unit dated 13 January 2011; the letter from the Head of Editorial Standards to the complainant explaining her decision not to proceed with the appeal; and the complainant's letter to the Trust dated 8 September 2011 asking the Committee to review the Head of Editorial Standards' decision not to proceed with his appeal.

The Committee noted that in the Consolidated Appeal it had upheld two breaches of the Editorial Guidelines on accuracy (Points S and AR) and one breach of the Editorial Guidelines on impartiality (Point AI). The Committee apologised for those breaches on behalf of the BBC in its finding on the Consolidated Appeal. Despite finding three instances where the Editorial Guidelines had been breached the Committee nonetheless concluded that *Death in the Med* had achieved due impartiality and due accuracy overall (page 11 of the Committee's finding on the Consolidated Appeal).

The Committee concluded that the Head of Editorial Standards' decision not to proceed with the complainant's appeal was correct. The Committee agreed with the reasons set out in the Head of Editorial Standards' letter of 16 August 2011 explaining why she did not propose to put any aspects of the complainant's appeal before the Committee for its consideration (summarised above). In summary, the Committee concluded that, as explained in the letter from the Head of Editorial Standards dated 16 August, each of the aspects of the complainant's appeal fell within one of the following two categories.

- (a) The aspect of the appeal does not have a reasonable prospect of success given the Committee's conclusions on an issue or issues which were considered by the Committee in the Consolidated Appeal and not upheld.
- (b) The aspect of the appeal is substantially similar to an issue that was considered by the Committee as part of the Consolidated Appeal and which was upheld. The Committee concluded that it would not be cost effective or proportionate for it to consider that aspect of the appeal and that aspect of the appeal did not raise a matter of substance.

The Committee confirmed that the following arguments made by the complainant do not have a reasonable prospect of success: the decision to make the motivation of the flotilla an overarching theme of the programme was clear evidence of partiality; and no explanation has been provided as to why the programme should have spent any time at all on seeking to establish whether the flotilla was a humanitarian mission or a political mission. As explained in the Head of Editorial Standards' letter of 16 August, the Committee had not found a breach of the Editorial Guidelines in relation to Point M of the Consolidated Appeal (pages 37 - 39 of the Committee's finding on the Consolidated Appeal). Point M concerned the allegation that the programme had misrepresented the humanitarian aims of the flotilla. Further, as set out in the Head of Editorial Standards' letter of 16 August, in its finding on the Consolidated Appeal, the Committee had decided that *Panorama* presented new material and it was editorially justified for the programme to focus on exploring this new evidence and not to reflect in any detail other equally important aspects of the wider story (pages 117 - 119 of the Committee's finding on the Consolidated Appeal).

The Committee noted that the complainant had phrased some of the issues raised in his appeal in a slightly different way in his letter of 8 September in which he requested the

Trust to review the Head of Editorial Standards' decision compared with the way those issues were phrased in the complainant's letter of appeal. The Committee agreed that the complainant did not raise any new issues in his letter of 8 September which had not been considered by the ECU at Stage 2 of the complaints process or by the Head of Editorial Standards. The issues in the complainant's letter which were phrased in a different way to his letter of appeal are listed below.

(i) In his letter of 8 September, the complainant argued that in concluding that two thirds of medicines are out of date and useless, the presenter failed to distinguish her personal opinion from fact. The Committee referred to the Head of Editorial Standards' letter of 16 August in relation to the description of aid on board the Mavi Marmara. The Committee decided that in light of its conclusions on the Consolidated Appeal, in particular on Point AQ of the Consolidated Appeal (pages 106 - 108 of the Committee's finding on the Consolidated Appeal); this aspect of the complainant's appeal did not have a reasonable prospect of success.

(ii) In the complainant's letter of 8 September, the complainant argued that the conclusion that the flotilla was politically motivated was merely an opinion based on flawed assertions. The Committee referred to the Head of Editorial Standards' letter of 16 August concerning the aims of the flotilla. The Committee decided that given its conclusions on the Consolidated Appeal, in particular on Point M of the Consolidated Appeal (pages 37 - 39 of the Committee's finding on the Consolidated Appeal), this aspect of the complainant's appeal did not have a reasonable prospect of success.

(iii) In the complainant's letter of 8 September, the complainant argued that the focus on the motives of the flotilla distracted from other issues. The Committee referred to the reasoning in the Head of Editorial Standards' letter of 16 August in relation to the aims of the flotilla and the motives of the Israeli Government. The Committee decided that in light of its conclusions on the Consolidated Appeal, in particular on Points M and AY of the Consolidated Appeal (pages 37 - 39 and 117 - 119 of the Committee's finding on the Consolidated Appeal), this aspect of the complainant's appeal did not have a reasonable prospect of success. In relation to whether the programme should have included information from the preliminary autopsy reports to achieve due accuracy, the Committee decided that: it would not be cost effective and proportionate for it to consider this issue; and the issue did not raise a matter of substance.

(iv) In the complainant's letter of 8 September, he complained that there is overwhelming evidence that: the IDF used unreasonable and excessive force against the flotilla; and there are numerous examples of the IDF using excessive and unreasonable force since the "flotilla incident". The Committee referred to the Head of Editorial Standards' letter of 16 August in relation to examples of Israeli behaviour and the legality of the actions of the flotilla. The Committee decided that in light of its conclusions on the Consolidated Appeal, in particular on Points AE and AY (pages 83 - 87 and 117 - 119 of the Committee's finding on the Consolidated Appeal), this aspect of the complainant's appeal did not have a reasonable prospect of success.

(v) In the complainant's letter dated 8 September, the complainant argued that the programme failed to ensure that all main views were reflected. The Committee noted that, as explained in the letter from the Head of Editorial Standards dated 16 August, the Committee decided in the Consolidated Appeal that the programme was duly accurate and duly impartial overall. The Committee referred to the comments in the letter from the Head of Editorial Standards dated 16 August concerning: the aims of the flotilla; the motives of the Israeli Government and the IDF; and whether the programme was justified in purporting to be a conclusive account of what took place. The Committee decided that given its conclusions on the Consolidated Appeal, in particular on Point AY (pages 117 -

119 of the Committee's finding on the Consolidated Appeal), this aspect of the complainant's appeal did not have a reasonable prospect of success.

In the complainant's letter of 8 September, in which he asked the Trust to review the Head of Editorial Standards' decision not to proceed with his appeal, he complained about the length of time taken to "deal with a complaint of this nature". The Committee acknowledged that there had been a delay between the publication of the Committee's finding on the Consolidated Appeal on 19 April 2011 and the letter from the Head of Editorial Standards to the complainant dated 16 August 2011 in which she explained the reasons why she did not propose to put any aspects of the complaint before the Committee for its consideration. However, the Committee concluded that the amount of time taken to deal with the complaint was reasonable.

In reaching this conclusion, the Committee took into account the large number of complaints made to the BBC following the broadcast of *Death in the Med* and the volume of issues raised in the appeals submitted to the Trust regarding *Death in the Med*. The BBC received more than 2,000 audience contacts following the programme and in total, the Trust received 30 appeals concerning *Death in the Med*. The Committee considered 51 separate issues as part of the Consolidated Appeal. Further, it was necessary to review in detail each appeal regarding *Death in the Med* which had not been included in the Consolidated Appeal to determine whether there was any overlap between the issues raised in each appeal that was not included in the Consolidated Appeal and the issues considered by the Committee in the Consolidated Appeal.

In addition, the Committee noted that the Head of Editorial Standards had apologised for the delay in responding to the complainant with her decision on whether his appeal should be put before the Committee for its consideration in her letter of 16 August.

In his letter of 8 September, the complainant also said that "no coherent explanation" was provided for why his appeal was not considered by the Committee as part of the Consolidated Appeal. The Committee concluded that the process for handling the complainant's appeal regarding *Death in the Med* had been coherently explained to him.

The Committee agreed with the Head of Editorial Standards that none of the issues raised in the complainant's appeal qualify for consideration by the Committee.

***Newsnight*, BBC Two, 4 January 2011**

Complaint

The complainant wrote to the BBC's Editorial Complaints Unit on 10 May 2011 saying he had been out of the country and had only recently viewed the *Newsnight* programme broadcast on 4 January 2011. The complainant said that he was aware that his letter was outside the 30 day period permitted for complaints, but said he did not think the BBC should ignore his allegations. The complainant raised a number of reasons as to why he considered an item relating to homeopathy had been biased against the practice of homeopathy. The complainant also made a number of allegations of misconduct regarding BBC staff involved in the programme and about influence from an external organisation, Sense About Science. The complainant specifically called into question the impartiality of the BBC producer who made the film.

The complainant alleged that the item on *Newsnight* was designed to influence the General Pharmaceutical Council in a misconduct case the complainant said had been brought by Sense About Science against a homeopathic pharmacy.

The BBC's Editorial Complaints Unit replied on 17 May 2011 to say that, as the complainant had pointed out, his letter fell well outside the period the BBC gives for lodging a complaint and that it would be inappropriate to change from the published process. There was an exchange of correspondence in which the ECU advised the complainant that he could raise issues about the conduct of BBC staff with the Head of Editorial Compliance and Accountability for BBC News.

The complainant contacted the Head of Editorial Compliance and Accountability for BBC News, asking her to investigate the questions raised about the conduct of certain BBC staff. She declined to investigate the complainant's concerns as the complaint had not been made within 30 days of the broadcast. The Head of Editorial Compliance and Accountability for BBC News said that she wanted to assure the complainant that if she had thought there was any evidence of serious professional misconduct to investigate, she would have overlooked the late timing of the complaint. However, she went on to say that she had made inquiries and was satisfied that the programme makers had acted in accordance with BBC Editorial Guidelines.

Appeal to the Trust

The complainant wrote to the Chairman of the BBC Trust on 18 July 2011, enclosing his original complaint and saying that, despite his serious allegations, his complaint had been rejected because of the 30 day deadline. The complainant said that he disagreed with the view of the Head of Editorial Compliance and Accountability for BBC News that the programme makers had acted in accordance with BBC Editorial Guidelines.

The Head of Editorial Standards for the BBC Trust wrote back to the complainant in response to his appeal against the decision of the Head of Editorial Compliance and Accountability for BBC News.

The Head of Editorial Standards explained that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She said that she had reviewed the case and in her view it should not proceed to the Editorial Standards Committee of the Trust for consideration on appeal.

The Head of Editorial Standards noted that the BBC has a published timeframe for making complaints, and the BBC website states:

“The process has three stages, designed to be straightforward to use and to enable us to address your concerns properly. You should normally make your complaint within 30 working days of the transmission or event and our aim is to respond within 10 working days.”

The Head of Editorial Standards noted that the complaint had been lodged outside this timeframe and added that, if there are exceptional circumstances, the BBC may accept a complaint outside the normal timeframe.

In considering whether the complainant had made out a case that there were such reasons she looked at his reasons for not complaining at the time and the seriousness of the issues he raised.

The Head of Editorial Standards noted that the complainant said he had been abroad on business and, having then viewed the broadcast, spent some time investigating the activities and background of the item’s producer.

The Head of Editorial Standards said that she did not consider that this amounted to exceptional reasons for the delay. She said that it was open to the complainant to inform the BBC that he had a complaint to make on the basis of what was broadcast and if necessary follow up with further information.

The Head of Editorial Standards then turned to the substance of the complaint. She said that there had been a number of other complaints about *Newsnight*’s film and discussion on homeopathy. As a result, the Editorial Complaints Unit had looked into the making of this film and the decisions over who should appear in the subsequent discussion thoroughly. She informed the complainant that she had previously decided other similar appeals had no reasonable prospect of success. The Head of Editorial Standards said that the complainant had not raised fresh information which had not been provided to the Trust on appeal previously.

The Head of Editorial Standards said that she did not consider that there was a reasonable prospect of success for the appeal that the complaint should be considered by the BBC Executive although it was lodged out of time. She did not propose to proceed with it.

The Head of Editorial Standards noted the complainant’s request for anonymity and confirmed that the appeal would be put to the Committee on this basis should he wish to challenge her decision.

The complainant replied asking the Trustees to review the decision of the Head of Editorial Standards not to proceed with the appeal.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the responses from the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted that the Head of Editorial Standards had considered whether there were good reasons for the delay, and whether the issues raised by the complainant were so serious as to make an exception to the usual requirement that a complaint is brought within 30 days. The Committee agreed that the reasons provided by the complainant for the delay did not constitute exceptional circumstances. The Committee noted that the complainant could have made his complaint within the 30 day timeframe and then followed it up with more information at Stage 1 of the complaints process. The Committee

agreed that the complainant had not raised any issues not already covered in previous complaints regarding this *Newsnight* item. The Committee agreed with the Head of Editorial Standards' decision that there was not a reasonable prospect of success for the appeal that the complaint should be considered by the BBC Executive although it was lodged out of time.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

***Newsnight*, BBC Two, 4 January 2011**

The complainant, who is Chairwoman of the Society of Homeopaths, appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept her complaint on appeal.

Stage 1

The complainant wrote to the BBC on 8 February 2011 to lodge a complaint about an item on homeopathy which was broadcast on *Newsnight* on 4 January 2011 and included an interview with her in her position as Chairwoman of The Society of Homeopaths. The complainant said she believed the item breached BBC Editorial Guidelines on Accuracy, Impartiality and Fairness.

She felt:

- the introduction to the programme, in which she was featured, was inaccurate.
- the explanation in the film about how homeopathic remedies are made was inaccurate and misleading.
- statements in the film regarding the use of homeopathic remedies in the prevention of tropical diseases were misleading.
- the inclusion of a BBC comedy sketch showed that the programme's intention was to make homeopathy look ridiculous, and that the sketch also added to the misleading impression given of the principles of homeopathy.
- the BBC was being misleading by drawing what the complainant described as generalised conclusions from an edited interview with one homeopath.
- the film made no effort to examine whether homeopathy is efficacious over and above that of placebo.
- the guest in the studio was a known opponent of homeopathy who had no medical or homeopathic qualifications.
- there was no opportunity to refute the guest's allegations.
- the invitation to the complainant to take part in the programme was not handled fairly.

The response from the *Newsnight* producer explained the background to the programme as a follow up to a programme in 2006 in which homeopaths recommending homeopathic protection against malaria were investigated.

He then responded to the allegations raised by the complainant in some detail. He explained that the complainant had been given an opportunity to state her position.

He said he disagreed that statements in the film regarding the use of homeopathic remedies in the prevention of tropical diseases were misleading. He said that the Chief Scientific Adviser and other scientific bodies describe the basis of homeopathy as "scientific nonsense" and that he felt the clip from the Mitchell and Webb sketch illustrated rather cleverly why they think it is.

He said there was no scientific evidence to prove that homeopathy is efficacious over and above that of placebo.

Turning to the studio discussion, he believed the complainant was given the opportunity to refute claims made by the guest in the course of the discussion.

There was further correspondence between the complainant and the Editor before the complainant was referred to stage 2.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 13 May 2011. She said she believed the *Newsnight* report breached BBC Editorial Guidelines on Accuracy, Impartiality and Fairness.

She said the replies from the producer had shown a bias against homeopathy which she believed had prejudiced the objectivity of the *Newsnight* programme.

She said she was not challenging that it was dangerous to advise taking homeopathic remedies for serious tropical diseases. However, she said the programme had no statistical evidence that lives were being put at risk by this practice. She took issue with a number of other statements in the producer's responses.

The Complaints Director sent an initial letter to the complainant on 17 May 2011 setting out the main points of complaint and explaining that these concerns would be looked at against the BBC Editorial Guidelines on Accuracy, Impartiality, and Fairness and Privacy. The Complaints Director responded to the complainant with a full response to each of the points raised on 9 June 2011.

1) The explanation of how homeopathic remedies are made was inaccurate and misleading.

The Complaints Director said that *Newsnight's* description of the preparation of homeopathic remedies seemed to him to be an accurate, albeit somewhat simplified, explanation of how a homeopathic remedy is produced.

2) There was no evidence to support the suggestion that the use of homeopathic remedies in the prevention of tropical diseases was widespread and this was putting lives at risk. The programme therefore was misleading.

The Complaints Director said he understood that the complainant believed the prescribing of homeopathic remedies for malaria took place on an "extremely limited scale" and so the programme had given a misleading impression of the extent of the problem.

He said that *Newsnight* had not given figures that might have led the audience to think the practice was widespread. He said that any practice which has potentially fatal consequences does not have to be widespread to be newsworthy. Therefore, he said he was satisfied that there was a legitimate public interest in drawing attention to it.

3) A clip from a Mitchell and Webb comedy sketch was used to highlight how "ridiculous" homeopathic medicine allegedly is. This indicated bias against homeopathy.

The Complaints Director said that bearing in mind the balance of evidence and informed opinion, he could not conclude that the inclusion of the clip would have led to a lack of due impartiality.

4) The report was one sided and contained no contribution from anyone supporting homeopathy. The report made no attempt to examine or present any of the available evidence which shows that homeopathy is efficacious over and above placebo.

The Complaints Director said he had considered both the film and studio discussion when considering if the guidelines on Impartiality had been breached and that, bearing in mind what he had said about due impartiality in point 3, he did not believe any guidelines had been breached.

5) The report returned to the “ocean” setting, adding impact to the initial misleading descriptions about homeopathic remedies.

He said he had explained in point 1 why he thought this was not misleading.

6) The studio guest was a known opponent of homeopathy. He had no qualifications on the subject being discussed but was presented as an authority on the subject.

He said the guest was introduced as a science writer, so he did not agree that viewers would have been led to believe that he was a particular authority on the subject. He also said that the views expressed by the guest would have made his position clear.

7) Claims made by the studio guest were allowed to go unchecked and no opportunity was given for them to be refuted.

The Complaints Director said he felt that the complainant was given appropriate opportunity in the discussion to explain her position.

8) The presenter said: “What...is a way of moving this forward given that it looks as if there is not going to be any court actions?” This was misleading as viewers could have been led to believe that some law had been broken.

The Complaints Director said he felt that, as the presenter had said there were not going to be any court actions, it was more likely that the viewers would conclude that no illegal activity had taken place.

9) The complainant was only invited to take part in the programme on the afternoon it was broadcast. She was not given a full brief on the nature of the programme’s content; at no point was she informed about the pre-filmed footage focussing on malaria.

The Complaints Director said he had put the complaint to the programme makers, who had given him their recollection of the various exchanges which took place on the day of transmission.

He said he appreciated there may have been a misunderstanding about the nature of the programme and the issues which would be addressed; however, the *Newsnight* team said it had informed the complainant that the item would be about homeopaths selling remedies for serious tropical diseases as well as the implications of new regulations on homeopathic animal medicines. The Complaints Director said, in the absence of evidence to the contrary, it was difficult for him to conclude that the complainant did not give the necessary informed consent and so he could not conclude there had been a breach of the guidelines.

Appeal to the Trust

The complainant wrote to the BBC Trust on 18 July 2011, saying she was not satisfied with the ECU’s investigation. She maintained that BBC Editorial Guidelines on Accuracy, Impartiality, Fairness and Privacy had been breached. In addition, she said the producer

had demonstrated a bias against homeopathic medicines which had prejudiced the programme.

She raised the following points on appeal:

- the explanation of how homeopathic remedies are made was inaccurate, misleading and lacked balance
- the BBC gave no evidence in the programme that homeopaths prescribing remedies for serious tropical diseases was a widespread problem, yet the suggestion was that homeopaths are misleading the public and lives are at risk
- the Mitchell & Webb comedy sketch did breach impartiality guidelines as it sought to ridicule homeopathy
- she did not believe due weight was given to both sides, taking into account the studio discussion
- the brief given to the complainant was misleading. While she was told that a clip from the secret filming of a homeopath prescribing for the prevention of malaria would be used, she was not informed about the other pre-filmed footage focusing on malaria
- this programme had used tabloid style journalism in an unbalanced report which contained a number of inaccuracies, with the aim of undermining professional homeopathic practice.

The Head of Editorial Standards replied on 5 August 2011 asking the complainant to supply details of why the appeal had been made outside the 20 day working period.

The complainant replied on 10 August 2011, providing reasons for the delay.

The Head of Editorial Standards responded on 28 September 2011 and accepted these reasons.

She explained that she understood that this was a matter about which the complainant felt very strongly, and noted the points made in the previous correspondence with BBC Audience Services and the ECU.

Having reviewed the correspondence and watched the programme, the Head of Editorial Standards considered that the BBC had made a clear case that the aim of the *Newsnight* programme was not to examine homeopathy in general but to focus on the recommendation of the use of homeopathic remedies to prevent serious tropical diseases. She noted that, in its reply, the BBC had made a strong case that the overwhelming weight of informed opinion is that homeopathic remedies should not be used as a prophylactic against diseases such as malaria. She noted too that none of the main homeopathic organisations, including the complainant's own, make any claim for evidence supporting the efficacy of homeopathic remedies in treating or preventing malaria.

The Head of Editorial Standards also noted that the prevailing, informed consensus in the medical and scientific community is that there is no consistent, reliable, peer-reviewed evidence which proves the efficacy of either homeopathic remedies in general or the effectiveness of the different phases of their preparation.

As a result, she did not believe that *Newsnight* was breaching Editorial Guidelines on Accuracy and Impartiality either when describing the preparation of homeopathic remedies or when considering the efficacy of homeopathic medicine.

Having watched the programme, the Head of Editorial Standards could find no evidence that *Newsnight* suggested that homeopaths commonly recommended homeopathic

remedies in the prevention of tropical diseases or that it was a widespread problem. However, the film did demonstrate that it had evidence that this practice was happening, so putting lives at risk.

In addition, the Head of Editorial Standards noted that at the end of the film the first question asked by the presenter was whether the complainant, a guest on the programme, thought it was right for such remedies to be recommended for tropical diseases. The complainant said she did not endorse this practice.

In this context, the Head of Editorial Standards did not believe that *Newsnight* was breaching Editorial Guidelines on Accuracy by misleading the audience about the scale of the problem.

In considering the use of a clip from a Mitchell and Webb comedy sketch, the Head of Editorial Standards took into account the informed consensus in the medical and scientific community about the efficacy of homeopathy. Bearing this in mind and given that the film was made for a *Newsnight* audience, she did not believe that she could conclude that the inclusion of the clip led to a lack of due impartiality.

She noted the complainant's points about the briefing given to the Society of Homeopaths. She noted too that *Newsnight* has explained that it only made the decision to broadcast the film on the morning of 4 January. The programme said it had sought interviews with a number of homeopathic bodies and did not know that the secretly filmed homeopath was a member of the complainant's society. The complainant had already been approached by this member about the secret filming, so the complainant contacted *Newsnight* before the programme said it was able to call her.

The Head of Editorial Standards understood the complainant's chief concern about the briefing to be that, while she was told that a clip from the secret filming of a homeopath prescribing for the prevention of malaria would be used, she had not been told that there was other pre-filmed footage focusing on malaria. The Head of Editorial Standards also understood that the complainant thought there would then be a "philosophical discussion" about homeopathy.

The Head of Editorial Standards said she had watched the discussion between the complainant and the presenter and she believed that the complainant was given appropriate opportunity to explain her Society's position and to refute allegations against it. The complainant was also able to make it clear that her Society had professional procedures in place to address any issues about individual members.

The Head of Editorial Standards noted that the complainant's letter of appeal suggested that she did know that one of her members had been secretly filmed prescribing remedies for malaria, and a clip would be used, as both the homeopath concerned and a *Newsnight* producer had told her. The Head of Editorial Standards also noted that the complainant understood that the discussion would include mention of a leaflet from a homeopathic pharmacy putting forward remedies for typhoid and polio. The Head of Editorial Standards said that this would suggest the complainant knew that the issue of prescribing homeopathic remedies for serious tropical diseases was likely to be discussed. As a result, the Head of Editorial Standards did not believe that BBC Editorial Guidelines on Impartiality or Fairness had been breached.

The Head of Editorial Standards explained that for the reasons set out in her letter, she did not consider that the appeal had a reasonable prospect of success and it should therefore not proceed to the Editorial Standards Committee of the Trust.

The complainant wrote to request that the Trustees review the decision of the Head of Editorial Standards not to proceed with the appeal. The complainant said that there were three issues not addressed by the Head of Editorial Standards' reply.

- The complainant said that it is extremely rare to find examples in any area of science or medicine where all evidence is consistent. She said that the BBC had not included any references at all to positive scientific trials on homeopathy and she cited some research which she said supported homeopathy.
- With regard to what the complainant described as "the failure of the BBC to accurately describe the importance of potentisation to homeopathic medicine manufacture", the complainant outlined the importance of succussion (a specific form of vigorous shaking) in the preparation of homeopathic medicine.
- The complainant also raised a previous issue regarding statements made in a response to the complaint by the producer of *Newsnight*, which the complainant said were inaccurate and serious allegations against the Society of Homeopaths.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the programme complained about.

The Committee noted that the complainant had raised a number of areas where she believed that the programme had been inaccurate, misleading and biased against homeopathy. The Committee also noted the complainant's concerns about the brief she had been given prior to taking part in the programme.

The Committee agreed with the Head of Editorial Standards that the BBC had made a clear case in its replies that the aim of the *Newsnight* programme was not to examine homeopathy in general but to focus on the use of homeopathic remedies to treat serious diseases like malaria. The Committee noted that the complainant had cited some examples which she said demonstrated homeopathy was as effective as conventional medicine; however, the Committee agreed that the prevailing, informed consensus in the medical and scientific community is that there is no consistent, reliable, peer-reviewed evidence which proves the efficacy of either homeopathic remedies in general or the effectiveness of the different phases of their preparation. The Committee agreed with the view of the Head of Editorial Standards that the programme's description of the preparation of homeopathic remedies and consideration of the efficacy of homeopathic medicine did not raise issues in relation to the guidelines on accuracy and impartiality.

The Committee agreed that the programme did not suggest that homeopaths commonly recommend homeopathic remedies in the prevention of tropical diseases, and that the programme did not mislead the audience about the scale of the problem.

The Committee was satisfied that the use of the comedy clip was within the audience's expectations for *Newsnight*, taking into account the informed consensus in the medical and scientific community about the efficacy of homeopathy.

With regard to the complaint of unfairness, the Committee agreed that the complainant had been given appropriate opportunity to explain her Society's position and to refute

allegations against it, and was also able to make it clear that her Society had professional procedures in place to address any issues about individual members.

The Committee noted the information available to the complainant prior to the programme and was satisfied that the complainant would have known in advance that the issue of prescribing homeopathic remedies for serious tropical diseases was likely to be discussed.

With regard to the statements made in a response to the complaint by the producer of *Newsnight*, the Committee noted that the complainant had been given the opportunity to escalate this specific element of the complaint to the Head of Editorial Compliance and Accountability for BBC News but had not proceeded with this course of action. The Committee therefore agreed that it was not appropriate to consider this matter on appeal.

The Committee agreed that for the reasons they had discussed, they agreed with the Head of Editorial Standards: the appeal did not have a reasonable prospect of success and the Committee should therefore not proceed with the appeal.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

***HARDtalk*, BBC News Channel, 28 April 2010**

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC concerning an interview with the then Prime Minister of Thailand, Mr Abhisit. In the interview conducted by Zeinab Badawi she put it to the then Prime Minister that his government had come to power "assisted by a military coup". The complainant said Ms Badawi's assertion was "patently false".

The BBC replied, defending the conduct of the interview. In subsequent correspondence the producer of *HARDtalk* apologised to the complainant, saying there had been technical difficulties during the interview, with the result that some of the terminology that was used was not as accurate as would normally be seen on the programme.

Stage 2

The complainant appealed to the BBC's Editorial Complaints Unit (ECU), concluding that it was inaccurate to say that Mr Abhisit had no mandate to govern. The ECU did not uphold the complaint, stating that it did not believe there had been a breach of the editorial guidelines.

The complainant responded to the ECU, noting that his concerns about the line, "You (Abhisit Vejjajiva) came to government assisted by a military coup and that doesn't look good" had not been considered.

The ECU replied stating that its thinking remained unchanged, and it informed the complainant of his right to appeal to the BBC Trust if he remained dissatisfied.

The complainant appealed to the BBC Trust. The Trust's Head of Editorial Standards replied explaining that she did not think that the complainant's appeal had a reasonable prospect of success and she therefore did not propose to proceed with it to the Committee. She also addressed the matter of the complaint regarding the questioning around the "coup" and said that if the complainant would like this to be taken up by the ECU again he should let her know. The complainant challenged the Head of Editorial Standards' decision not to proceed with the rest of the appeal and the matter went to the Editorial Standards Committee for a decision on whether to accept the appeal. The Committee considered the matter in May 2011 and agreed with the Head of Editorial Standards' decision not to take the appeal. This decision was published by the Trust in June 2011⁷.

The complainant also accepted the Head of Editorial Standards' offer to pass one element of the complaint back to the ECU. The ECU responded to the complainant's point regarding the reference to the military coup, saying that it was intended to be covered by the general finding that the presenter was asking the question in the interviewer's role of Devil's Advocate. The ECU noted that the presenter had signified in her early remarks her intention to put to Mr Abhisit his opponents' criticisms.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust asking for the complainant's point regarding the reference to "coup" to be considered on appeal. He said that the presenter's assertion

⁷ http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/may.pdf

that Mr Abhisit came to power as the “direct beneficiary of a coup” was not presented as a question and that repeating an allegation that is “definitely known to be false” does not constitute playing Devil’s Advocate. The complainant asserted that Ms Badawi had been left with the “wrong wording” by a colleague in preparation for the interview.

The complainant noted information he had received from the BBC indicated that this was not an isolated incident and that the BBC had apologised elsewhere to the Abhisit government over a news piece which alleged the government was “unelected”. The complainant asked the BBC Trust to consider that the BBC’s own coverage from 2006 to 2008 demonstrates it was *definitely known* that Mr Abhisit was not the direct beneficiary of a coup.

The Trust’s Senior Editorial Strategy Adviser replied to the complainant setting out the response from the Trust’s Head of Editorial Standards. She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of the role of the Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that, having read the relevant correspondence, she did not consider that the appeal had a reasonable prospect of success and it should therefore not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the complainant’s allegation that the presenter’s words came across not as a question, but as a statement of fact. However, the Head of Editorial Standards considered that an interview necessarily takes the format of question and answer, even when the interviewer is making a range of points. At the point in the interview where Zeinab Badawi states:

“But you know what is feeding this grievance because there are those, your political opponents who say you yourself Abhisit Vejjajiva never won an election. You took office in December 2008, elected by Parliament because the constitutional court didn’t allow the Thaksin Party to run in any way and you need your own mandate. You have not had your own mandate and that’s what people don’t like. You came to government assisted by a military coup and that doesn’t look good.”

she is effectively asking Mr Abhisit to respond, which he does.

With regard to the complainant’s point, that the assertion that Mr Abhisit is the “direct beneficiary” of a military coup is false, the Head of Editorial Standards noted the ECU had previously acknowledged this could be misunderstood by those not aware of Thai politics and that this could lead them to believe that there was a military coup which put Mr Abhisit in power. She also noted that the editor of *HARDtalk* has previously acknowledged and apologised for any inaccuracy in the terminology used in the interview:

“As a result I do think that this affected the focus of this interview and the result was that some of the terminology we used was not as accurate as we would normally see on ‘HARDtalk’. This was the case in describing the mandate the Prime Minister has in his right to govern and we were inaccurate in some of the language we used in this line of questioning. I do think you have some justification in your complaint in this area and we apologise for that. ‘HARDtalk’ is a programme that prides itself on accuracy and on this occasion we do agree that we fell short. However we are keen at some stage to do a further interview with Prime Minister Abhisit Vejjajiva on ‘HARDtalk’ so do please keep watching.”

The Head of Editorial Standards noted where the ECU drew on Mr Abhisit’s response to the charge that he had come to power as the result of a military coup:

“That’s not right, that’s not right. Thaksin was removed from power, in fact he was only an acting Prime Minister because elections were going to be held. And then after the coup they had a referendum on the new constitution. A referendum passed that constitution we had fresh elections, it returned a parliament that was a hung parliament where actually arguably you could argue that Thaksin Party actually took some of the minor parties who during the elections campaigned as people who defected from that party...”

The Head of Editorial Standards concurred with the ECU’s finding, that because Mr Abhisit’s response set out the factual position, the viewer would not have been left with an inaccurate impression and that due accuracy was achieved.

The Head of Editorial Standards noted the complainant’s contention that Ms Badawi could not be playing “Devil’s Advocate” as stated by the ECU, because the position she was arguing for was definitely false. But in her opinion, putting across the point of view of political opponents did constitute playing Devil’s Advocate in this context.

The Head of Editorial Standards concluded that it was clear from the transcript that the arguments put forward were responded to fully by Mr Abhisit and therefore she did not consider there to have been a breach of the Guidelines in respect of Impartiality.

The complainant’s request for a retraction and admission of error by the BBC were rejected because, for the reasons outlined above, the Head of Editorial Standards did not believe there had been any breach of the BBC’s Guidelines.

The Head of Editorial Standards noted the complainant’s comments regarding previous apologies for news items, but the complainant was advised that each item must be judged on its own merits and, in the case of Zeinab Badawi’s interview, this particular piece was duly accurate and impartial.

In respect of the complainant’s assertion that Ms Badawi was left with the “wrong wording” in preparation for the *HARDtalk* interview the complainant was similarly advised: each item must be judged as broadcast, and for the reasons already outlined the Head of Editorial Standards believed the interview as broadcast to have been duly accurate and duly impartial.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant reiterated his appeal and in particular, raised the following points:

1. The complainant said the BBC has done nothing to publicly accept Mr Abhisit’s correction of the allegation put to him. The fact that he had a right of reply does not prevent this from being a breach of the guidelines.
2. The complainant said the BBC is effectively saying that Mr Abhisit is unilaterally saving the BBC from a breach of impartiality with his reply, against the BBC personnel’s own effort. The BBC is not responsible for everything an interviewee does, so why, when Mr Abhisit’s response provides balance to the BBC’s own objective inaccuracy, does the BBC get to take responsibility for his response?
3. The complainant said the Editorial Guidelines state that everyone is required to work within the Guidelines: *Guideline 2.2.2 - Knowledge of the Guidelines is an essential professional skill, and everyone who makes the BBC’s content is*

contractually required to familiarise themselves with them and work with them. This means that no one person is allowed to commit actions that, without outside interference, would result in a breach of the guidelines. If the interviewer is partial, the guidelines are breached, even if the programme as broadcast is impartial. Does the ESC agree with this interpretation?

4. The complainant asked why the Head of Editorial Standards ignored his point that you can not play Devil's Advocate with a "position that you know is definitely false". He said this is not a matter of the BBC's 'opinion' as to what is Devil's Advocate or not. Repeating what you know to be untrue is not the same as arguing for a possible position that goes against the grain.
5. The complainant said that viewers have their opinions formed over a succession of BBC broadcasts. This is not compatible with the statement that "each piece must be judged on its own facts". The BBC has elsewhere asserted that Mr Abhisit's government was "unelected". Are viewers aware that, if the BBC is inaccurate in more than one place, their perceptions "must" not be simultaneously affected by these different broadcasts?
6. The complainant asked why an apology given to a complainant by the editor of *HARDtalk* regarding issues with this programme has not been made public.

The complainant also asked for confirmation that the Committee had been provided with his full challenge to the Head of Editorial Standards' decision not to proceed with previously considered aspects of his appeal request (the decision which was published in the May 2011 Editorial Standards Committee bulletin⁸).

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letters of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the programme complained about.

The Committee noted that it had already agreed not to accept those aspects of the complainant's appeal which came to it for consideration in May 2011. It confirmed that in that case it had been provided with the complainant's full challenge to the Head of Editorial Standards' decision, which it took into account when making its decision to reject the appeal request.

The Committee noted the points raised by the complainant in his subsequent appeal to the Trust following the Editorial Complaints Unit's response to the outstanding aspects of his complaint. The Committee noted the Head of Editorial Standards' reasons for concluding that the appeal did not have a reasonable prospect of success.

The Committee agreed that an interview necessarily takes the format of question and answer, even when the interviewer is making a range of points, and that the interviewer in this case was effectively asking Mr Abhisit to respond. The Committee also agreed that Mr Abhisit took the opportunity given to him to correct the allegation that he had been a

⁸ http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/may.pdf

“direct beneficiary” of a military coup, and that viewers were not likely to have been left with an inaccurate impression.

The Committee noted the hypothetical scenarios put forward by the complainant in which the interview might not have met the requirements for due impartiality (for example, the complainant had stated “if Mr Abhisit had given in to Zeinab Badawi’s repeated attempts to interrupt this so called ‘full explanation’, the BBC would have failed to be impartial”). However, the Committee was mindful that in judging whether there was a reasonable prospect of success for the appeal it had to consider the programme that was actually broadcast.

In relation to the complainant’s point regarding Guideline 2.2.2, the Committee agreed that they had not seen any evidence to suggest that the interviewer was not familiar with the Guidelines.

With regard to the complainant’s assertion that repeating an inaccurate statement cannot be considered to be playing “devil’s advocate”, the Committee noted that the presenter framed the particular allegation in question as the view of Mr Abhisit’s opponents. The Committee agreed that this was in line with the technique of playing devil’s advocate, which was an acceptable way of challenging people in power who can be expected to be able to respond to robust questioning. The Committee agreed that there was not a reasonable prospect of success for the complaint that there was a breach of the impartiality guidelines in this respect.

The Committee agreed with the Head of Editorial Standards that any apologies given by the BBC for previous news items were not relevant to the consideration of the chances of success for this appeal. The Committee agreed that each item must be judged on its own merits and in this case there was not a reasonable chance of success for an appeal on the grounds that the interview had not been duly accurate and impartial. The Committee also agreed that as, in their view, the broadcast as a whole was duly impartial and duly accurate, the briefing given to the presenter before broadcast was not relevant as there had been no standards breach.

The Committee noted that in his response to the complainant at Stage 1 of the process, the editor of *HARDtalk* had apologised that:

“some of the terminology we used was not as accurate as we would normally see on ‘HARDtalk’. This was the case in describing the mandate the Prime Minister has in his right to govern and we were inaccurate in some of the language we used in this line of questioning.”

The Committee noted that, while the editor had apologised that standards had fallen below those normally seen on *HARDtalk*, she had not accepted that there had been a breach of the guidelines. The Committee did not consider that there was a requirement for the editor’s response to complaints against the programme to have been made public by the BBC in the absence of an upheld breach at Stage 2. Any complainant who was dissatisfied with the response at Stage 2 was entitled to appeal to the ESC.

Overall, the Committee was satisfied that Mr Abhisit had every opportunity to respond to the allegations put to him and that there was no reasonable prospect of success for an appeal on the grounds that the interviewer’s questioning led to a breach of the guidelines on accuracy or impartiality.

The Committee noted the complainant's assertion that in the event that the Committee does not reach a different conclusion to the Head of Editorial Standards, they should make it clear that they agree with certain points raised by the complainant. It was agreed by the Committee that for the reasons already discussed, it was not necessary to address those points.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

The Big Questions, BBC One, 23 January 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC stating that an item on the *Big Questions* about the Iraq War which posed the question "Should Tony Blair stand trial for war crimes?" breached the BBC guidelines on Impartiality. The complainant said that as the matter was controversial there should have been a voice stating that Blair was broadly right about Iraq, instead all the chosen contributors were either against the war or against the handling of the war. The complainant also maintained that the wording of the question exhibited bias.

The BBC said there had been nothing in the question which implied Tony Blair was guilty of war crimes. It was a legitimate topic to discuss as the question had been posed in a recent YouGov poll which registered significant minority support; it had also been raised elsewhere in the media. There is no obligation on programme makers to reflect all the different opinions on a subject within an individual programme. The BBC noted that the programme was not presented as a broad debate about the rights and wrongs of the war, which had been the subject of a *Big Questions* debate a year earlier.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) stating that the question was not legitimate as it implied reasonable people might take a view on either side of the question: it gave a platform to those who put Tony Blair on a par with Nazi, Serb and Libyan war criminals. The complainant said it was irrelevant that the rest of the media considered it a legitimate question.

The complainant said because the programme was broadcast at a key point in the Chilcot Inquiry (just after Tony Blair had given evidence), an attempt should have been made to present balanced views on the rights and wrongs of the war.

The ECU said that while some viewers might find the topic offensive, the choice of subject matter falls within the editorial discretion of programme makers, providing the subsequent debate meets the requirements of the editorial guidelines. The subject of the debate was clearly set out and in the view of the ECU the programme included an appropriate range of views on the topic under discussion.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust reinforcing his earlier points that the programme had breached the Impartiality guideline, and stating that in his opinion the choice of topic was relevant because it framed the discussion during the programme, forcing it to be about the extent to which the war was wrong.

The Trust's Head of Editorial Standards replied to the complainant, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that, having read the relevant correspondence, she did not consider that the appeal had a reasonable prospect of success and it should therefore not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the guideline requirement for "due impartiality", defined as being

"...adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation."

She noted the programme which dealt with faith and ethical issues had been in the same slot since 2007. The standard format was four panellists and a live studio audience discussing relevant topics from that week's news. She noted too that the question posed was attributed to protesters outside the Chilcot Inquiry two days earlier who had called for Tony Blair to stand trial for war crimes.

The Head of Editorial Standards agreed with the ECU that the choice of topic was a matter for editorial discretion, unless in exercising that discretion a guideline was found to have been breached. Her view was that the parameters of the discussion and the basis for the question posed were made clear to the audience. In her view, the programme would have met the requirement for due impartiality in relation to signposting and audience expectation.

The Head of Editorial Standards noted that whilst the panellists and audience focussed on the question posed, it did not prevent a range of views about the war being stated. She noted that three of the guests in particular articulated a variety of argument in support of at least some aspects of Tony Blair's stance. In her view, any discussion about the war eight years on is inevitably more complex than a straightforward discussion about the rights and wrongs of going to war, as a result of post war events and what has become known from the inquiries and investigations which have taken place.

The Head of Editorial Standards noted the complainant's contention that particular care with balance was required because the Chilcot Inquiry was at a significant stage. She noted 4.4.9 of the guideline on Impartiality:

"..when the issues involved are highly controversial and/or a decisive moment in the controversy is expected, it will normally be necessary to ensure that an appropriately wide range of significant views are reflected in a clearly linked 'series of programmes', a single programme or sometimes even a single item."

In her opinion, because the programme clearly delineated its subject matter, the range of guests and the views expressed by those guests represented the "wide range of significant views" in relation to the subject matter (should Tony Blair face a war crimes trial?).

The Head of Editorial Standards considered the complainant's contention that the framing of the question was offensive against clause 4.4.18 of the Impartiality guideline:

"Contributors expressing contentious views, either through an interview or other means, must be rigorously tested while being given a fair chance to set out their full response to questions. Minority views should be given appropriate space in our output; it is not for the BBC to suppress discussion."

She noted that in the discussion considerable space was devoted to debate which rigorously tested the contentious nature of the question: one panellist expressed the view that Iraqi civilian deaths in the war were comparable to those in Bosnia, Rwanda or Nazi Germany, three others said the charge devalued the concept of a war crime, a view which aligned closely with that expressed by the complainant.

The Head of Editorial Standards noted the complainant's assertion that the debate could not meet the editorial guidelines in the absence of a clear voice stating that Tony Blair

was broadly right about Iraq. She considered that it had been demonstrated how the clarity with which the programme defined the topic enabled the programme to frame the discussion in the way it did. She noted section 4.2.5 of the Impartiality guideline which states:

“We exercise our 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.”

In the Head of Editorial Standards’ view, the “point on the spectrum of debate” chosen in this instance was whether it was proper to consider the criticisms of Tony Blair’s conduct in the context of a war crimes trial. The programme had demonstrated good editorial reasons for posing the question, given the significant minority support demonstrated in the YouGov poll and the demonstration a few days earlier outside the Chilcot Inquiry.

The Head of Editorial Standards concluded the signposting of the topic, the handling of the live debate which ensued and the range of views and opinions that were reflected meant the complaint would not have a reasonable prospect of success and should not therefore proceed to appeal.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant said his appeal against her decision was based on the proposition that the programme was in the context of the wider Iraq war debate and in these circumstances it should have included adequate representation of the view that Blair was broadly right about the Iraq war. The complainant said that there was clearly a consensus amongst those taking part in the programme that the war was wrong in one way or another, the only difference being about whether it was so wrong that it should be regarded as a war crime.

The complainant noted that the Head of Editorial Standards had said the front row of the audience was selected for the subject under discussion. He said that this contrasted with what he had been told by the BBC; that the audience was selected at random.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s letter of appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit and the programme complained about.

The Committee noted the complainant’s arguments that: any discussion of the question “should Tony Blair stand trial for war crimes?” necessarily encompassed the wider question of whether the war was right or wrong; and that the programme did not provide a balanced discussion of the wider question. The Committee also noted the view of the Head of Editorial Standards that the clarity with which the programme defined the topic enabled the programme to frame the discussion in the way it did.

The Committee agreed with the Head of Editorial Standards’ analysis, and her view that, given the signposting of the topic, the handling of the live debate which ensued and the range of views and opinions that were reflected in the context of the topic under discussion, the complaint would not have a reasonable prospect of success and should not therefore proceed to appeal.

The Committee also noted the complainant's query regarding whether the audience was invited or selected at random. The Committee noted that the Head of Editorial Standards' statement that the front row of the audience was invited was not incompatible with the information which the complainant had been given previously, as the rest of the audience was picked at random.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Complaint handling

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC complaining about delays and confusion during the handling of complaints he had lodged about *The Big Questions* and two episodes of *Newsnight*.

The complainant said he had not received a response to his follow-up correspondence from these three complaints after periods of nine, seven and five weeks respectively. He said telephone calls to chase progress resulted in confusion as to which complaint he was inquiring about.

The BBC agreed that the delays and confusion in handling the three complaints had been unacceptable. The BBC apologised to the complainant and said the matter would be raised with the relevant staff as a training issue and that the three outstanding responses would be forthcoming in the following few days.

Further confusion led to the complainant being told wrongly that two of the responses he requested had already been sent.

Stage 2

The complainant escalated his complaint to the next stage of the process.

The Head of Audience Services gave detailed reasons for the delays that had been experienced by the complainant. He said that because some complaints can be complex, the BBC does not enforce a strict time limit on its investigations of escalated complaints at Stage 1; the aim was to reply in a reasonable time frame taking into account the complexity of the complaint.

The Head of Audience Services explained that he thought the complainant received misinformation suggesting he had been sent responses in February, because it had not been understood that the complainant was referring to follow-up emails and not an initial Stage 1 response. He said the complainant had a considerable number of complaints in the system and that had resulted in the confusion. The Head of Audience Services said that, although the number of complaints this complainant had in the system may have introduced some handling confusion, this should not normally be the case.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust. He stated that saying sorry was not good enough given the scale of mistakes that had been made. He did not accept the explanations he had been given and said good practice would be for the BBC to send out standard replies to people whose cases are delayed. The complainant said that over the years that he had been holding the BBC to account as a licence fee payer, almost every response had started with an apology for the delay.

The Trust's Head of Editorial Standards replied to the complainant, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that, having read the relevant correspondence, she did not consider that the appeal had a reasonable prospect of success and it should therefore not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards said the ESC was aware of the significant problems experienced by BBC Audience Services early in 2011. She noted these had been detailed to the complainant in the reply he had received from the Head of Audience Services, which explained the problems were due to the large volume of complaints received and the transition to a new IT system. The complainant was advised that the Trust had been kept informed by Audience Services about the issues faced and the actions being taken to overcome and improve the situation.

The complainant was advised that the Trust had conducted a "mystery shopping" project to look at how complaints to the BBC were being handled, details of which could be found on the Trust's website at:

http://www.bbc.co.uk/bbctrust/our_work/other/complaints_framework.shtml

The Head of Editorial Standards said that as part of the Trust's review of the BBC's complaints framework it would be considering the issue of time limits for second Stage 1 responses. The complainant was invited to contribute to the public consultation on the review.

The Head of Editorial Standards said the Trustees would wish her to apologise for the difficulties the complainant had faced in progressing his complaints. However, she noted he had already received apologies from the BBC, along with explanations. The Head of Editorial Standards noted too the Head of Audience Services' point about how complex complaints which are escalated can take longer to receive a response. And the complainant was also advised that because he sometimes had several complaints in the system at any one time, it could on occasion be difficult to be clear which complaint he was referring to in correspondence.

Overall on reviewing the complaint, the Head of Editorial Standards understood the frustration the complainant had experienced to date. But she considered the matter resolved and as such did not propose it should proceed to appeal.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant said that he could understand delays in the circumstances described but not on the scale of those he had experienced. He questioned the statement given by Audience Services that it was not clear that he was chasing responses to complaints he had made about responses already received, stating that he had clearly emphasised that the delays he was referring to related to the online follow-ups. The complainant also said that his question about who had been responsible for the delays had not been answered and that his comments about the inadequacy of dealing with the matter as a training issue had not been addressed. The complainant said that he was entitled to know what action has been taken.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Head of Communications and Complaints for BBC Audience Services.

The Committee noted that the complainant was dissatisfied with the explanations and apologies that had been given to him by the BBC with regard to the handling of his complaint.

The Committee noted and endorsed the apology given by the Head of Editorial Standards for the delays the complainant had experienced in the course of his complaint.

The Committee noted that the Head of Editorial Standards had informed the complainant that Trustees were aware of the problems with complaints handling at Stage 1 which were exacerbated by a transition to a new IT system. The Committee noted that the Head of Editorial Standards had explained that the Trust was monitoring the situation and that it had conducted a mystery shopping exercise to look at how complaints to the BBC were being handled. The Trustees were also mindful that the BBC's complaints framework was currently being reviewed and that the issue of time limits for second Stage 1 responses was being considered as part of this work. The Committee noted that the complainant had been invited to respond to the public consultation when it was launched. The Committee agreed that, taking into account the apologies that the complainant had received and the fact that work was already underway to address the issues which contributed to the delays, the matter did not have a reasonable prospect of success on appeal as it had been resolved at an earlier stage in the complaints process and it did not raise a matter of substance. It would not be proportionate or cost effective to take this on appeal.

The Committee noted the complainant had raised the question of who was responsible, but it was content that reasons had been given to the complainant for the delay which were sufficient to resolve the matter. The Committee also noted the complainant's suggestion that those responsible should be reprimanded; however, it was satisfied that the matter had been dealt with as a training issue.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Horizon: Science Under Attack, BBC Two, 24 January 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC alleging that a statement about carbon emissions made in an edition of *Horizon* was inaccurate. The complainant said the President of the Royal Society, Paul Nurse, had been asked to quantify the relative contributions of CO₂ to the atmosphere by human and natural causes. The complainant said Mr Nurse's response, that seven Giga tonnes are emitted each year by human activity while only one Giga tonne came from natural sources was an "absurd and incredible statement".

The Editor of *Horizon* responded to the complainant stating that the programme posed the following question: given the complexity of the climate system, how can we be sure that humans are to blame for this change? He set out his understanding of the science relating to CO₂ emissions and the context in which Mr Nurse made the comparison:

- The atmosphere exchanges CO₂ with the land and with the oceans in what is known as the carbon cycle.
- Over the past 15 years the oceans and lands have been absorbing slightly more CO₂ than they have been giving off.
- The reference to the one Giga tonne of extra CO₂ from natural sources relates to when there has been a volcanic eruption and a consequent "natural" release of CO₂ into the atmosphere additional to the normal exchange in the carbon cycle.
- Human activities by contrast had resulted in an emission of at least seven Giga tonnes of CO₂ a year through fossil fuel burning.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU), which agreed to investigate the matter against the guideline on Accuracy.

The ECU Head of Editorial Complaints said the statement in the programme would have been seriously inaccurate had it been referring to the total of atmospheric carbon dioxide. However, he did not agree with the complainant that no other interpretation was possible.

The Head of Editorial Complaints said it was deducible from the immediate context that the carbon dioxide referred to in the programme was that which was in excess of the levels sustained by the normal processes of carbon exchange. The ECU said in this context the "seven times more" claim was accurate and it did not uphold the complaint.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust. He said the statements broadcast had the potential to seriously mislead and/or confuse the viewing public with respect to the proportion of atmospheric CO₂ that can be attributed to human activity.

The Trust's Head of Editorial Standards replied to the complainant, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that, having read the relevant correspondence, she did not consider that the appeal had a reasonable prospect of success and it should therefore not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the detailed explanation from the Editor of *Horizon* explaining the key point in the film's argument: that there is an increasing amount of CO₂ in the atmosphere, and that this is paralleled by the rate at which humans are producing CO₂. She noted the Editor's understanding that human activities were responsible for the emission of at least seven Giga tonnes of carbon dioxide a year and that the increase in measured CO₂ in the atmosphere would have been greater if not for the exchange which takes place in the carbon cycle.

The Head of Editorial Standards noted the comments were made in an exchange discussing whether humans were responsible for the change in the climate. She noted too the likely expectations of the *Horizon* audience. The Head of Editorial Standards concluded it would have been clear to the viewer from the context in which the comments were made that Mr Nurse was discussing how humans were producing CO₂ levels over and above those produced by the carbon cycle.

The Head of Editorial Standards did not consider Mr Nurse's comments were misleading. Accordingly she did not consider the complaint had a reasonable prospect of success and did not propose that the appeal proceeds to the Committee.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with this appeal. The complainant reiterated his view that the programme would have given the misleading impression that emissions of CO₂ related to human activity were seven times the total level emitted by natural processes.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted the Head of Editorial Standards' observation that the comments were made in an exchange discussing whether humans were responsible for the change in the climate and her view that it would have been clear to the viewer from the context in which the comments were made that Mr Nurse was discussing how humans were producing CO₂ levels over and above those produced by the carbon cycle. The Committee agreed with the Head of Editorial Standards that the comments made by Mr Nurse were not misleading and that the complaint did not have a reasonable prospect of success on appeal.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Stargazing Live, BBC Two, 3 January 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept her complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC saying that comments on astrology made by the programme's presenter, Dara O'Briain were misleading, insulting and factually incorrect. In the section containing the comments which caused the complainant concern, the presenters, Dara O'Briain and Brian Cox, were discussing how the planets orbit the Sun at different speeds and distances:

Dara O'Briain: Very rare for this kind of thing to happen. It is because all of them have a different, different orbital length. This is, you know, only, only the Earth goes around in one year and comes back to the same spot. Horoscopes – that's all nonsense. We are happy to say this now, once and for all – that's all rubbish, right, astrology, because the planets are in different places at different times.

Brian Cox: In the interests of balance, because we're on the BBC, I should say that indeed, Dara is right, astrology is...

Dara O'Briain: It's nonsense, it's absolute nonsense, right.

The BBC said in response that *Stargazing Live* was a factual programme about the stars and had not intended to be dismissive of the practice of astrology. The complainant said she was dissatisfied with the reply and after a delay for which the BBC subsequently apologised, a response was received from the programme producer.

He noted that it was a live programme in which Dara O'Briain and his co-presenter Professor Brian Cox were encouraged to engage in natural conversation about matters related to astronomy. The remarks about astrology were off-the-cuff and intended to be light-hearted in tone.

Stage 2

The complainant asked the Editorial Complaints Unit (ECU) to investigate her complaint. The ECU said that while many of the topics covered in the programme were of a serious and scientific nature, the approach of the presenters was light-hearted and humorous. The ECU said this was true of the exchanges preceding the comments which were the subject of this complaint.

The ECU also noted an earlier decision by the Editorial Standards Committee (ESC) of the BBC Trust which had ruled on a similar case in relation to references to astrology in a science programme. In that instance the ESC concluded that while the phrasing used might have offended some viewers it was not a controversial subject and therefore it was not a guideline requirement to provide an alternative view or explanation of astrology.

In subsequent correspondence between the ECU and the complainant, the ECU said it accepted the comments made by Mr O'Briain did not accurately represent the astronomical and technical basis on which astrologers believe astrology to work. But the ECU said its finding acknowledged the distinction between Mr O'Briain's comments about planets being "in different places at different times" and the relative complexities of the charts used by astrologers and astrologers' understanding of planetary cycles. The ECU

said the characterisation of astrology in the programme did not amount to a breach of the guidelines on Accuracy or Impartiality.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust reiterating the main themes of her complaint and stating the comments made were “offensively misrepresentative of the knowledge and study that the subject of astrology entails”.

The Head of Editorial Standards apologised for the delays experienced by the complainant in the handling of her complaint at Stage 1. The Head of Editorial Standards said that the Committee was aware of the problems with Audience Services over the last year and would continue to monitor the situation.

The Head of Editorial Standards noted that the programme was a live broadcast, presented by Dara O’Brian, a comedian and amateur astronomer and Professor Brian Cox, a physicist. She noted the aim of the programme was to bring astronomy to a wider audience.

The Head of Editorial Standards noted the unscripted nature of the programme and the “banter” between the presenters which featured throughout. She noted this was the context within which the exchange about astrology was made. The Head of Editorial Standards, while noting the complainant’s contention that the comments about astrology were introduced needlessly, felt they would have been in line with audience expectations for this presenter.

Whilst the Head of Editorial Standards was sorry the complainant found the content offensive, she did not believe there was a case for the Executive to answer in relation to the Editorial Guidelines and did not propose to put the appeal to the ESC.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with her appeal. The complainant said that the comments attract more attention than light-hearted banter because they were emphatically delivered within a science programme and were repeated in order to clear up the point “once and for all”. The complainant also referred to the ECU’s statement that the comments did not accurately represent the astronomical and technical basis on which astrology is based. The complainant said that she would like this statement to receive publication as the inaccuracy undermines the professional integrity of qualified astrologers.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s letter of appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted and endorsed the apology given by the Head of Editorial Standards for the delays the complainant had experienced in the course of her complaint.

The Committee noted that the ECU had agreed with the complainant’s view that the comments made on the programme did not accurately represent the astronomical and technical basis on which astrologers believe astrology to work; however, it had not upheld the complaint as a breach of the accuracy guidelines. The Committee agreed that the programme was not likely to have materially misled the audience with regard to the general attitude of the scientific community to astrology.

The Committee also noted that the complainant had disagreed with the Head of Editorial Standards' view that, while the programme was of a scientific nature, the comments were made in a light-hearted manner which would have been in line with audience expectations for this presenter. The Committee did not share the complainant's view that the comments carried more weight than mere banter because the way they had been phrased suggested that they were authoritative, reputable and correcting misinformation. The Committee's view was that the way the comments were delivered accorded with the humorous tone of the presenter, who would have been well known to the audience as a comedian.

The Committee agreed with the Head of Editorial Standards' view that there was no case to answer in terms of a breach of the Editorial Guidelines and therefore the appeal had no reasonable prospect of success.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Today, BBC Radio 4, 23 March 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC stating that the programme included reports of rockets fired from Gaza into Israel the previous day "which caused no injuries and resulted in no fatalities", but did not mention the Israeli bombardment of Gaza on 22 March which resulted in eight deaths.

The Assistant Editor of *Today* responded saying the attacks on Gaza had featured in BBC Radio 4's bulletins on 22 March and that it was not possible to include every development in each edition of *Today* but over time the programme tried to give "as comprehensive an overview as possible of events in the region". There was further correspondence between the complainant and the *Today* programme as to how the programme's coverage of rocket attacks into Israel compared with the reporting of Israel attacks into Gaza during the relevant time period.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) accusing the BBC of bias in what he saw as a disparity in coverage. The complainant considered the *Today* programme had a duty to provide coverage of all important events, regardless of their coverage elsewhere in the Radio 4 schedule. He was advised that the ECU's remit was confined to examining potential breaches of editorial standards. This was an issue relating to the compilation of a bulletin running order and more properly dealt with by BBC News management.

The Head of Editorial Compliance and Accountability for News responded on 10 June 2011 detailing the three occasions on 22 March in which Radio 4 news bulletins reported on the casualties in Gaza. She agreed with the complainant that the reports mentioning rocket attacks into Israel from Gaza on 23 March should have made reference to the previous day's fatal attacks on Gaza. A general line about the surge of shelling between Israel and Hamas was not in her opinion adequate, even considering that it was a busy news day.

The Head of Editorial Compliance and Accountability for News noted the complainant's statement that the *Today* programme is responsible for providing coverage of "all important events that have occurred during the last day, regardless of whether or not they have already been covered on Radio 4 news bulletins". She disagreed with this view, stating that the programme is not "a journal of record". She added that decisions on what to include in the programme are a matter of editorial judgement; programme makers are not required to give every fact in every report.

The complainant was advised he had the right of appeal to the BBC Trust within 20 working days if he was dissatisfied with the response he had received.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 26 August 2011 restating all the points from his original complaint.

The Head of Editorial Standards quoted from the BBC complaints framework which states that complainants should adhere to time limits set down in the outline procedures. The

complainant was referred to item 2.19 of the BBC's editorial complaints and appeals procedure which states:

"If you are still dissatisfied with the response that you have received at Stage 2, you can request an appeal to the BBC Trust's Editorial Standards Committee (ESC) within 20 working days of the date of the final Stage 2 response (or exceptionally the Trust may allow longer if the Trust decides there is a good reason for the delay)"

She noted the appeal was sent 55 working days after the complainant had received the final Stage 2 response. The Head of Editorial Standards noted the reasons given by the complainant for the delay: exams, a new job and relocation overseas. In her opinion these did not constitute evidence of exceptional reasons and she therefore determined that his appeal did not qualify to be heard by the Editorial Standards Committee.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant repeated the reasons he had initially given for the delay in submitting his appeal and explained that, given the pivotal importance of his exams for his career he had decided to delay his appeal.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Head of Editorial Compliance and Accountability for News.

The Committee sympathised with the complainant's reasons for delaying his appeal to the Trust but was mindful that if an explanatory letter had been sent within the time limit for making an appeal then any request to extend the deadline could have been considered. As it was, the complainant had not contacted the Trust until well past the stated deadline for making an appeal and it agreed with the Head of Editorial Standards' decision not to admit the appeal on the grounds that it was out of time.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

The Apprentice – 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC Director-General stating that a trailer for *The Apprentice* contained an on screen caption which stated "weak people are a waste of space".

The Director-General said that he was sorry to hear that the complainant was offended by the caption, and he quoted a response from the programme producer:

"Given that the public are now very much aware that *The Apprentice* ... is a programme about business, and that the environment depicted in the trailer (shots of the City of London, candidates in suits etc.) was clearly a business environment; we felt confident that viewers would interpret the statements as referring to business acumen and strength of personality. At no point did we intend for the graphics in the trailer or the sentiments expressed by the candidates ... to cause any offence".

The complainant considered the phrase was a breach of the BBC's responsibilities in respect of equality laws. The complainant was advised that whilst the BBC is bound by the Public Sector Equality Duty contained in the Equality Act 2010 (PSED), that duty did not extend to content related activities in order to protect the Corporation's editorial independence. Therefore the trailer and the editorial decisions around its content were not covered by the PSED.

Stage 2

The complainant wrote to the BBC's Editorial Complaints Unit (ECU) requesting it review his complaint in the context of the allegations he had made at Stage 1, including further clarification of how the requirements of the PSED applied to the BBC.

The ECU stated that legal issues surrounding the PSED were not within its remit but that the complaint would be investigated against the guidelines on Harm and Offence and Portrayal.

The ECU noted that there were two different versions of the trailer, but in both the words that were actually heard were:

"weak people in business are a waste of space".

In one version there was also an on screen caption alongside the spoken phrase which had been edited down to read

"weak people are a waste of space".

The ECU noted that at no time had the phrase appeared without the words "in business" being spoken.

The ECU concluded the context made it clear the phrase was not a reference to physically weak people but to people who might be perceived as weak performers in the world of business. It did not uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust asking it to consider only the visual aspect of the trailer. He argued the use of the phrase was inappropriate and not in the spirit of equality legislation:

“The Apprentice purports to deal with, or to be representative of the real world of work and business, which is not exempt from Equality legislation.”

The Head of Editorial Standards noted the complainant’s strong feelings on the matter but stated that in her view he had received a full and convincing response from the BBC Executive. She noted the comments from the producer of the programme who outlined that the environment depicted in the trailer was clearly a business environment, and that he felt confident that viewers would interpret the statements as referring to business acumen and strength of personality. The Head of Editorial Standards considered in the context of the programme the majority of viewers would interpret the comments in this way.

The ECU’s conclusions were also noted, particularly the results of its investigation which revealed that the phrase was spoken in full as the abbreviated caption appeared, making it clear the reference was to those who might be perceived as weak in business.

The Head of Editorial Standards noted the complainant had already been advised that legal issues surrounding Equality legislation were outside of the remit of the ECU.

The Head of Editorial Standards concluded the appeal did not have a reasonable prospect of success because it was clear that the comment was addressing the business world specifically rather than the world generally.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. The complainant reiterated the points made in his letter of appeal and objected to the suggestion that his complaint did not raise a matter of substance. The complaint said that the comments perpetuated a negative stereotype of the personal capabilities and competencies required to operate in business.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s letter of appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the complainant had objected to the suggestion that the complaint was not a matter of substance. The Committee noted that the complainant felt strongly about the issue; however, the consideration was whether it was a matter of substance in relation to the requirements of the Trust’s appeals procedure, namely 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 Committee noted that the complainant had asked it to define “the nature of its performance management conceptualisation of ‘weak performers in the world of business’” and provide written evidence that the reference to business was made absolutely clear in the broadcast content of *The Apprentice*. However, the Committee did not agree that these requests were relevant to its consideration of this appeal request.

The Committee noted that the Head of Editorial Standards considered that the points raised by the complainant had received a full and convincing response from the BBC

Executive. The Committee agreed with the view that the environment depicted in the trailer was clearly a business environment and that the comments would be interpreted by viewers as referring to business acumen and strength of personality. The Committee was satisfied that the comments made in the trailer were not intended to convey prejudice or hostility towards members of protected groups as suggested by the complainant.

It noted that the complainant said that the comments perpetuated a negative stereotype of the personal capabilities and competencies required to operate in business. However, the Committee was mindful that the comments were clearly presented as the view of the participant in the programme, a programme which often featured behaviour from the contestants that viewers would not necessarily consider to show the contestants in a favourable light. The Committee was mindful that viewers would be able to make up their own minds about whether or not they considered the comments made by the contestant to be valid.

The Committee agreed with the Head of Editorial Standards' view that the appeal did not have a reasonable prospect of success and therefore should not be taken by the Trust.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Today, BBC Radio 4, 25 July 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept her complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC alleging bias in the item questioning whether the Jordan Codices (a collection of metal books said to date back to the first century AD) were genuine. She alleged that the reporter was aware of tests which proved the Jordan Codices were from the period claimed, but the reporter had failed to mention them. The complainant further alleged that the subject had been trivialised by the use of music and by reference to the *Da Vinci Code* by Dan Brown.

A senior producer from the programme responded saying the item was a follow-up to a piece by the Religious Affairs Correspondent which had been broadcast on the *Today* programme in March this year. The complainant, whose contribution to the first item was noted, was advised the programme had returned to the subject because they had been given access to the items in question. The producer defended as legitimate, the programme's decision to explore allegations of fakery in the context of the influence of the *Da Vinci Code* and denied the subject had been trivialised. The reporter had not seen the metallurgy reports cited by the complainant.

Stage 2

The complainant wrote to the BBC's Editorial Complaints Unit (ECU). The complainant alleged she had sent the material she cited to the correspondent prior to broadcast, but it had been ignored.

The ECU accepted the item was leaning towards a sceptical view of the codices, but it appeared that was broadly in line with those who had seen and examined them. The interview with the owner of the codices was sufficient to meet the requirement of the Editorial Guidelines on Impartiality, which did not require equal weight or time to be given to different views for "due impartiality" to be observed. There was no requirement for the metallurgy tests to be mentioned, particularly as they had not been peer-reviewed or published. The ECU noted the item broadcast in March had only interviewed those who believed the codices were genuine.

The ECU did not accept the subject had been trivialised: the item had focussed on the Codices but also discussed the changing image of archaeology and the increase in forgeries on the back of the impact of works such as the *Da Vinci Code*.

The ECU did not uphold the complaint.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust asking for the matter to be considered on appeal. She asked why the reporter:

"...[chose] to ignore the entire content of the document sent to him by those who do not think that the codices are forgeries?"

The Head of Editorial Standards noted the introduction to the package stated it was a follow-up to the item on the same subject transmitted in March, in which there were no voices raising doubts or expressing scepticism as to whether the items were genuine.

Whilst the second item had more sceptics than supporters, it included lengthy quotes from the owner supporting the veracity of his property. The script did not allege the items were certainly forgeries, although the correspondent did interview people who thought they were.

The Head of Editorial Standards quoted the following section from the Editorial Guidelines dealing with "due impartiality":

"In achieving due impartiality, a 'series of programmes' may be considered as a whole.

The term 'series of programmes' applies to the following:

- Content that deals with the same or related issues, within an appropriate period, and are clearly linked.

This may include a strand with a common title; different types of linked programmes (such as a drama with a following debate); a clearly identified season of programmes or items on the same or similar subjects; or a set of interlinked web pages. Such programmes, items or web pages need to achieve due impartiality across the series, and online content should include links or signposts to the other online elements.

The intention to achieve due impartiality in this way should be planned in advance. For programmes, the dates and times of other programmes in the series should be announced at the time of the first relevant programme. Where that is not practicable, advance notice of subsequent programmes in the series should be given in other ways.

- Programmes dealing with widely disparate issues from one edition to the next, but also clearly linked as a strand with a common title and a particular remit.

In strands, due impartiality should normally be achieved within individual programmes, or across a specific number of explicitly editorially linked programmes. However, across a whole series or over time these strands will also need to demonstrate due impartiality, for example through a consistent application of editorial judgement."

The Head of Editorial Standards also cited clause 4.4.26, the relevant parts of which state:

"On long-running or continuous output (such as general daily magazine programmes, the News Channel, Online, etc.) due impartiality may be achieved over time by the consistent application of editorial judgement in relevant subject areas... Editors of long-running or continuous output should ensure that:

- it reflects a broad range of individuals and views, including all main strands of argument
- differing views are given due weight and treated fairly in terms of prominence, treatment and time of day
- there is an appropriate timeframe for assessing that due impartiality has been achieved."

The Head of Editorial Standards said the correspondent and programme could decide what material to include, as long as due weight had been given to a range of viewpoints. There was no requirement to include specific evidence or information and the complainant was reminded that the reporter said he had not seen the metallurgy report in question.

In the view of the Head of Editorial Standards, no important perspective was omitted over the two items, although the weight applied to each perspective was different between the two:

“Although it came from a more sceptical viewpoint, I am content that this piece which is the subject of your complaint did leave it open for the listener to make up their own mind about the legitimacy of the Jordan Codices and the more general matter of the reasons for an increase of archaeological fakery.”

In relation to the allegation that the subject had been trivialised, the Head of Editorial Standards did not agree. She stated that in her opinion the use of music and references to wider archaeological issues helped broaden the item beyond the microcosm of the codices.

The Head of Editorial Standards concluded the appeal did not have a reasonable prospect of success.

The complainant responded saying that she wanted an answer to the question of why the reporter had not used the content of the document sent to him.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s letter of appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the Head of Editorial Standards had explained to the complainant that the Editorial Guidelines do not specify that an item has to include any particular piece of evidence or information as long as “due impartiality” is maintained. The Committee noted that the response from the Editorial Complaints Unit had said that the tests referred to in the documents sent to the reporter were unpublished and had not been independently assessed. The Committee was satisfied that the choice of what information to provide in a report was a matter of editorial judgment so long as the guidelines on impartiality were not breached. In this case, the Committee was satisfied that the BBC had explained its editorial decision to the complainant and it agreed with the Head of Editorial Standards that the appeal did not have a reasonable prospect of success. The Committee agreed that a detailed response to the complainant’s question was not necessary as the decision about what to include was the reporter’s prerogative.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Louis Theroux – Ultra Zionists, BBC Two, 3 February 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC about a line in the commentary in which Louis Theroux said tourists were

“working land that the international community, the US included, viewed as illegal.”

The complainant said the sentence was inaccurate because while the US does oppose the settlements, considering them a hindrance to the peace process, it has not declared them to be illegal. The complainant quoted a previous BBC Trust ruling which had accepted this was the case.

The programme’s executive producer conceded that the US had most recently characterised the settlements as “illegitimate” and that the US had used its veto in a recent UN vote on the issue. He said for future clarity the phrase had been removed from master copies of the UK and BBC worldwide versions of the film.

The complainant considered the response did not go far enough and requested that the BBC formally uphold his complaint. He was advised that although the US position should have been summarised more accurately, it was not within the remit of Stage 1 of the BBC Complaints process for complaints to be formally upheld or published.

Stage 2

The complainant wrote to the BBC’s Editorial Complaints Unit (ECU) requesting that it acknowledge that it was not the policy of the USA that the settlements were illegal.

The ECU confirmed that the previous Trust ruling applied also on this occasion. The ECU noted too a recent statement by Ambassador Rice in which she rejected the legitimacy of continued settlement activity but also said it did not mean the US characterised settlement activity as illegal.

The ECU concluded that the script line fell short of the standards of accuracy required by the Trust. The ECU said that the action taken by the programme makers had addressed the error and that in the ECU’s view the complaint had been resolved. The ECU apologised to the complainant for the breach in standards and said a summary would be posted on the complaints page of the BBC website acknowledging the BBC’s lapse.

The ECU advised the complainant that the finding was one of “resolved” rather than “upheld”. The complainant said the public acknowledgement of the error should draw attention to the fact that the US does not consider the settlements to be illegal.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust. He stated that the ECU should have “upheld” his complaint rather than finding it had been “resolved” because in his opinion the inaccuracy was not explicitly acknowledged until it reached the ECU. The complainant also objected to the statement observation in the ECU finding that the US disapproved of settlement activity, stating it was irrelevant.

On the second point, the Head of Editorial Standards advised the complainant that the way in which the ECU chose to frame its response was entirely within the ECU's operational discretion and not a matter for consideration by the Trust as it did not engage any of the relevant editorial standards. Accordingly there was no case for the Executive to answer on that point.

The Head of Editorial Standards considered whether the ECU decision to issue a finding of "resolved" was the correct one in the circumstances.

The Head of Editorial Standards noted the ECU's explanation as to how it reached its finding:

"(resolved) is a finding we reach when we agree that there was a breach of editorial standards as identified by the complainant, but take the view that those responsible for the content in question had taken sufficient steps to address the breach before the complaint reached us."

The Head of Editorial Standards noted that the original complaint engaged the guideline on Accuracy. She considered the clause from the Accuracy guideline relevant to this appeal:

"Correcting Mistakes

3.4.26

We should normally acknowledge serious factual errors and correct such mistakes quickly, clearly and appropriately. Inaccuracy may lead to a complaint of unfairness. An effective way of correcting a mistake is saying what was wrong as well as putting it right."

The Head of Editorial Standards considered the action taken at Stage 1 in removing the sentence from future broadcasts and the acknowledgement of the error were the "sufficient steps" which the ECU said had been taken leading it to reach its finding of "resolved".

The Head of Editorial Standards noted the complainant had stated that he considered "sufficient steps to address the breach" would be a public acknowledgement of the error on a BBC website related to the complaints procedure. She noted the complainant had been advised that the finding would appear on a BBC website, alongside those of "upheld" complaints. The complainant was advised the published summary would state how the guidelines had been breached and the remedies that had been taken.

The Head of Editorial Standards concluded that at Stage 1 of the complaints process the mistake was acknowledged and corrected and that at Stage 2 the complainant had been advised the finding would be published. She considered these actions to be in accordance with the requirements of the Accuracy guideline and also with the complaints framework. The Head of Editorial Standards considered the complainant's request for an appeal against the relevant clause from the guideline on Accountability:

"19.4 FEEDBACK AND COMPLAINTS

19.4.8

The ESC may consider any matter which raises questions of a potential breach of the BBC's editorial standards... including appeals against decisions and actions of the Editorial Complaints Unit and divisional directors in dealing with editorial complaints."

The Head of Editorial Standards stated that in her opinion there was no case for the Executive to answer in relation to the guideline on Accountability and therefore did not recommend the appeal proceed to the ESC.

The complainant requested that the Trustees consider the decision of the Head of Editorial Standards not to proceed with the appeal. The complainant said that the Head of Editorial Standards' reply suggested that the USA has avoided stating that the settlements are legal. He provided examples which he said demonstrated that the Obama government was clear in not considering the settlements to be illegal.

The complainant reiterated his point that prior to the complaint reaching the ECU, no explicit acknowledgment had been made by the BBC that the USA did not consider the settlements to be illegal. The complainant claimed that the removal of the quote in question from master copies so that it is not aired again, implies that the BBC is not sure whether the statement is accurate. The complainant does not think that this is an explicit acknowledgment that the statement was inaccurate. The complainant also said that the response at Stage 1 had failed to say what was wrong with the statement in question and therefore the ECU's judgement should have been one of upheld rather than resolved.

With regard to the ECU's finding, the complainant said that it introduced a controversial subject which was extraneous to the complaint and amounted to a lack of impartiality. The complainant said that this was therefore a matter for the Trustees.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the ECU comes to a finding of resolved when it agrees that there has been a breach of editorial standards, in this case those relating to the Accuracy guidelines, and that sufficient steps have been taken to address the breach before the complaint reached the ECU.

The Committee noted that the BBC had informed the complainant that the inaccurate quote had been removed from all master copies of the programme, and that it would not be broadcast again in its original form either in the UK or overseas. The Committee agreed with the view of the Head of Editorial Standards that the action taken in acknowledging the error and making the correction were the "sufficient steps" which the ECU had considered had been taken thus enabling it to reach its finding of "resolved".

The Committee noted that the complainant had referred to the Accuracy guidelines which say in relation to correcting mistakes that "an effective way of correcting mistakes is to say what was wrong as well as putting it right". The Committee noted that the complainant had argued that the BBC had not said that the statement was wrong until the complaint had reached the ECU. The Committee was mindful that, irrespective of which stage of the complaints process it had occurred at, the BBC had accepted that the statement was wrong and this decision had been published.

The Committee therefore agreed with the Head of Editorial Standards that the actions taken at Stages 1 and 2 were in accordance with the requirements of the editorial

guideline relating to Accuracy and with the complaints framework. The Committee agreed that there was not a case to answer in relation to the guideline on Accountability.

The Committee noted that the complainant argued that, in observing that the USA disapproves of the settlements, the ECU's finding raised issues of impartiality. The Committee agreed with the Head of Editorial Standards that the way in which the ECU chooses to frame its response to a complaint is entirely within the ECU's operational discretion. The Committee did not agree that in setting out the context of the USA's attitude to settlements the ECU had provided information extraneous to the complaint which had breached guidelines.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

BBC Breakfast, BBC One, 26 April 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC stating his concern that an item about the local election featured two "Vote Labour" posters and no posters from any other party.

The BBC agreed that the poster should not have been shown but said it was human error and not a deliberate expression of bias.

Stage 2

The complainant wrote to the BBC's Editorial Complaints Unit (ECU).

The ECU said the item featured promotional material for all the three major parties. This included promotional material being printed and leaflets being put through letterboxes. In addition the report included brief interview clips with councillors from the Conservative, Liberal Democrat, Labour and Respect parties. While the Labour party posters may have been more instantly recognisable than the promotional material featured from the other parties, in the view of the ECU it did not make the report biased in favour of one party. The ECU noted that viewers were referred to the BBC website which listed all the candidates in the election. The ECU found the report observed "due" impartiality as required by the Editorial Guidelines, in that it was "adequate and appropriate to the output".

Appeal to the BBC Trust

The complainant wrote to the BBC Trust asking for the matter to be considered on appeal. He stated that in his view the prominence given to the Labour posters had a greater impact than the shots of campaign material for the other parties.

The Head of Editorial Standards said the BBC had responded fully to the complainant's criticisms and his complaint of political bias, and in her view a case had not been made for the BBC Executive to answer.

The Head of Editorial Standards noted that promotional material relating to the Conservative and Liberal Democrat parties was included in the report and, more significantly, there were interviews with four parties. The Head of Editorial Standards' view was that the item was in compliance with both the election guidelines and the impartiality guidelines.

The Head of Editorial Standards concluded that the complainant had not made a case for the BBC Executive to answer and it would be a disproportionate use of resources for the matter to proceed to appeal.

The complainant requested that the Trustees review the Head of Editorial Standards' decision not to proceed with his appeal. The complainant said that the interviews with the four parties were irrelevant as his complaint was about the visual content of the item. The complainant reiterated his view that the shots of the Labour Party promotional material were more prominent than that of the other parties featured.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted the complainant's view that the interviews with the four parties were irrelevant. However, it agreed with the decision of the Head of Editorial Standards to take into account the effect of the item as a whole when considering whether it was likely that the guidelines had been breached. The Committee agreed that, while the shots of the Labour Party promotional material had been more prominent than the shots of the Liberal Democrat and Conservative Party material, this did not have the effect of undermining the impartiality of the item as a whole.

The Committee agreed with the Head of Editorial Standards that the complainant had not made a case for the BBC Executive to answer and that it would be disproportionate for the matter to proceed on appeal to the ESC.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Storyville – Meet the Climate Sceptics, BBC Four, 31 January 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC alleging institutional bias in the way the Corporation reports on the causes and effects of climate change. The complaint included specific allegations against *Storyville: Meet the Climate Sceptics* which the complainant said made him seriously doubt the impartiality of the BBC.

Responses were received from the programme production team and the series' executive producer. These explained amongst other things, the authored nature of the film, that it was a personal journey of the film maker through the world of climate change scepticism.

Stage 2

The complainant wrote to the BBC's Editorial Complaints Unit (ECU). The ECU considered the points made by the complainant against the BBC's Editorial Guidelines on Impartiality. In rejecting the general complaint of bias, the ECU explained the BBC Trust's position that the weight of evidence supports the view that man-made climate change is taking place. The ECU also considered a number of specific complaints about the programme which alleged that due impartiality was not observed and that the programme was biased against climate change sceptics. The ECU did not uphold any of the points.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust asking for the matter to be considered on appeal.

The Head of Editorial Standards advised the complainant that the stated position of the Editorial Standards Committee remained in line with the Trust's endorsement of the report by John Bridcut for the BBC, "From Seesaw to Wagon Wheel: Safeguarding Impartiality in the 21st Century" (2007).

The Head of Editorial Standards noted the report's conclusion that there is a broad scientific consensus that climate change is happening, that it is at least predominantly man-made, and that the impartiality guideline does not require equal prominence to be given to those disagreeing with the assertion that human actions have been responsible for global warming.

The Head of Editorial Standards noted the ESC's view that this does not mean debate should be closed down or that the sceptic's view should not be given air time, as there is sufficient evidence that such views still hold currency in political and business circles and continue to have influence in the debate.

The Head of Editorial Standards advised that the ESC had noted that all the main political parties in the UK have to a greater or lesser extent recognised that Anthropogenic Global Warming (AGW) is a contributor to climate change. It has also agreed that while the science behind AGW is not "controversial" in the sense that the vast majority of scientists and politicians agree on what is occurring, despite an articulate sceptical minority, there was still controversy over what this meant in policy terms.

In relation to appeals in this area of editorial output, the ESC had made its position clear: its role is not to judge the competing claims as to the science but to assess whether the output under scrutiny had followed BBC guidelines on impartiality.

The Head of Editorial Standards detailed the ECU's reasoning that there had not been a breach of impartiality in any of the seven specific points they determined had been raised about the *Storyville* programme:

1. Rupert Murray provided an authored view where he tested his own "green beliefs" and "preconceived ideas" to find out for himself what evidence there was to support the views put forward by climate sceptics.
2. There was no requirement for the programme to provide detailed analysis of the accuracy and reliability of computer models which suggest that AGW is occurring.
3. The programme did include sceptic voices: views of Lord Monckton; contributions from James Delingpole, Professor Ian Plimer and Professor Richard Lindzen; and views of members of the public and other campaigners.
4. The level and tone of both sides of the debate was accurately reflected and fairly portrayed and justified in the context of the programme.
5. The programme ensured that viewers were sufficiently aware that alternative theories for climate change are put forward by climate sceptics.
6. The programme acknowledged that computer models are a tool used by climate scientists and that they cannot be regarded as conclusive on the causes or consequences of climate change. It also stated that it is impossible to prove one way or the other whether single weather events are evidence of climate change.
7. The programme used footage of extreme weather events but it did not say they were a direct result of climate change.

The Head of Editorial Standards noted the ECU's conclusions and considered that, in combination with the stated public position of the ESC on the matter, there was no reasonable prospect of success for the appeal with regard to the complaint that the BBC had breached its Editorial Standards on Impartiality in this episode of *Storyville*. The Head of Editorial Standards therefore concluded it did not qualify to proceed to the ESC.

The Head of Editorial Standards noted the complainant's letter of appeal stated:

"I have not had a straight response from anyone in the BBC to my general allegation of bias and lack of impartiality in the way the BBC reports on climate change and very much hope that the BBC Trust will take note of this when reviewing my complaint."

With regard to the complaint of general bias, the Head of Editorial Standards considered her decision not to progress the specific impartiality complaint against *Storyville: Meet the Climate Sceptics* had a direct bearing on the prospects for success of the wider complaint, as the programme had been put forward as evidence of institutional bias and general lack of impartiality in relation to the reporting of the climate change debate. The Head of Editorial Standards considered that the general complaint did not have a reasonable prospect of success and it would be disproportionate and not cost effective to ask the ESC to rule on the matter.

The Head of Editorial Standards concluded by drawing the complainant's attention to the BBC Trust's review of the impartiality and accuracy of the BBC science coverage, published in July 2011. She noted that the review did not find any evidence of institutional bias in the way the BBC reports climate change.⁹

⁹ http://www.bbc.co.uk/bbctrust/our_work/other/science_impartiality.shtml

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal. He challenged the conclusions of the Trust's review of the BBC's science coverage, citing evidence which he said undermined the consensus that global warming is predominantly manmade.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the Head of Editorial Standards had referred the complainant to the Trust's endorsement of the Bridcut report and to the conclusions of the Trust's recent review of the impartiality and accuracy of the BBC's science coverage. The Committee agreed that the role of the Trust was not to judge the competing claims as to the science but to assess whether the output had followed BBC guidelines on impartiality, which do not require that equal prominence is given to those disagreeing with the assertion that human actions have been responsible for global warming.

The Committee noted the ECU's conclusions with regard to the individual points made by the complainant about this episode of *Storyville* and agreed that, taking into account the public position of the Trust on the matter, there was no reasonable prospect of success for the appeal on the grounds that the BBC had breached the guidelines on impartiality.

The Committee noted the Head of Editorial Standards' reasons for concluding that the complaint of general bias should not proceed to the Trust and it agreed that it did not have a reasonable prospect of success and it would be disproportionate and not cost effective for the ESC to rule on the matter.

Notwithstanding its decision with regard to the appeal request, the Committee raised a concern about a section of the programme in which footage of Lord Monckton was accompanied by a piece of music by Gilbert and Sullivan. The Committee asked for this matter to be investigated and brought to the Committee for consideration.

The Committee was therefore satisfied that, with the exception of the specific issue relating to the footage of Lord Monckton, the decision not to proceed with the appeal was correct.