

Editorial Standards Findings

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

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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 http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/esc_tor.pdf.

The Committee comprises four Trustees: Alison Hastings (Chairman), David Liddiment, Richard Ayre and Lord Williams. 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 may consider appeals concerning complaints which allege that:

- the complainant has suffered unfair treatment in a transmitted programme, item or piece of online content, or in the process of making the programme, item or online content
- 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 or online content
- there has otherwise been a failure to observe required editorial standards.

However, not all requests for appeal qualify for consideration by the ESC. The Editorial Complaints and Appeals procedure¹ explains that:

5.10 The Trust will only consider an appeal if it raises "a matter of substance".² This will ordinarily mean that in the opinion of the Trust there is a reasonable prospect that the appeal will be upheld as amounting to a breach of the Editorial Guidelines. In deciding whether an appeal raises a matter of substance, the Trust may consider (in fairness to the interests of all licence fee payers in general) whether it is appropriate, proportionate and cost-effective to consider the appeal.³ The Trust may not consider an appeal that is trivial, misconceived, hypothetical, repetitious or otherwise vexatious. The Trust may also decline to consider an appeal which includes gratuitously abusive or offensive language if the complainant refuses to reword it after being invited to do so.

¹

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf

² Under the Charter and Agreement, the Trust has a role as final arbiter in appropriate cases, and must provide a right of appeal in cases that raise a matter of substance.

³ For example, if an appeal raises a relatively minor issue that would be complicated, time-consuming or expensive to resolve, the Trust may decide that the appeal does not raise a matter of substance, and decline to consider it.

In deciding whether an appeal qualifies for consideration, the Committee may also decide to take only part of the appeal, and consider only some of the issues raised.

Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

The findings for all appeals accepted by the Committee are reported in this bulletin, Editorial Standards Findings: Appeals to the Trust and other editorial issues considered by the Editorial Standards Committee.

Where it is considered that an appeal does not qualify for consideration, the Trust Unit will write to the complainant within 40 working days of receipt of the request for an appeal, declining to put the matter before the Committee and explaining the reasons. If the complainant disagrees with this view then they may, within 10 working days, ask the Editorial Standards Committee to review the decision, and the matter will be reviewed at the next available meeting of the Committee.

The Committee will then decide whether it agrees with the decision not to proceed with the appeal, and again will aim to provide the complainant with its decision within 80 working days of receipt of the request for review. Any appeals that the Committee has declined to consider under the above criteria are reported in the bulletin under the heading Rejected Appeals.

If the Committee disagrees with the decision not to proceed with the appeal, the complainant will be informed following the meeting and the appeal will be considered, following investigation, at a later meeting. In this case the 80 working day time period will start again from the date the Committee informs the complainant it will hear the appeal.

Achievement against these target response times is reported in the BBC's Annual Report and Accounts: <http://www.bbc.co.uk/annualreport/>. 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 and is available from:

The Secretary, Editorial Standards Committee
BBC Trust Unit
180 Great Portland Street
London W1W 5QZ

Summary of findings

In Touch, BBC Radio 4, 21 February 2012

The complainant said that an item in which a contributor discussed Apple's voice-activated "Siri" feature was an "uncritically positive exposition of Apple's iPhone 4S and Siri". The complainant alleged that:

- the report was inaccurate and misleading in its coverage of Siri's functionality and amounted to product placement, made no mention of similar products from other suppliers and amounted to promotion or endorsement
- the product was unduly prominent
- The link to Apple's website from the programme's webpage lacked editorial justification, was unduly prominent and amounted to a promotion or endorsement.

The Committee concluded:

- that the report had contained reservations and criticisms of Siri and had acknowledged several shortcomings, demonstrating the unreliability of its responses in certain circumstances.
- that the report had highlighted the features and shortcomings of Siri that were likely to be of particular interest to visually impaired listeners.
- that a product review from a visually impaired user's perspective was not required to scrutinise each and every pro and con of the product in question and the information provided was adequate and appropriate to a product review.
- that the report had included both positive and negative comments about Siri and that the impression was not given that the BBC endorsed Siri. Mentions of Siri in this product review had been clearly editorially justified. This was a product of specific interest to the audience because of its plain English voice command feature.
- that verbal references to Siri in a product review were both to be expected and appropriate, and there had been no breach of the Guidelines on undue prominence.
- that it had not seen any evidence to indicate that the review of Siri had been included in the programme for a commercial purpose, or that any payment had been made or other valuable consideration given to the BBC in return for the review.
- that references to Siri in the report did not amount to product placement.
- that, as there was no evidence to suggest the BBC had been provided with anything in exchange for credits, the Guidelines requiring that on-air credits are editorially justified were not engaged.
- that it would have been helpful if the introduction to the report had placed Siri in the context of the wider market for voice-activated mobile apps, by mentioning the availability of similar products that might also have been of use to listeners

(although without necessarily naming those products).

- that, having concluded that the product was not unduly prominent; that this was not product prominence; and that references to Siri were clearly editorially justified and the review was not a promotion or endorsement of Siri, there was no substance to the allegation that this amounted to “plugging”.
- that there was potential public value, particularly to visually impaired persons, in all the links that were provided on the webpage for the 21 February 2012 edition of *In Touch*, since all the websites provided further information that was both relevant to the content of the programme and potentially useful.
- that it had not seen any evidence to suggest that the link to the iPhone 4S website had been included in return for cash, services or any other consideration in kind, and the link to the website in question was not, therefore, a form of credit.
- that the link was clearly editorially justified. Given the direct editorial relationship to the content of the programme, the Committee concluded the inclusion of the link to the Apple website did not give the impression of an endorsement and therefore this did not constitute undue prominence.
- that the complainant had not adduced compelling evidence of a breach of the Guidelines on Editorial Integrity and Independence from External Interests.

The complaint was not upheld.

For the finding in full see pages 6 to 18.

Today, BBC Radio 4, 16 May 2011

The complainant said that an interview on BBC Radio 4’s *Today* programme about Nakba Day 2011 was inaccurate and misleading as it did not make clear that the specific clashes in which people were killed were in the Israeli occupied and annexed Golan Heights, rather than on Israel’s borders.

The Committee concluded:

- that a member of the audience listening to the scripted introduction and to the interview would conclude that protestors had crossed into Israeli territory. The Committee agreed that this was not duly accurate.
- that the audience would not necessarily understand the distinctions of the boundaries between Israel and its neighbours in the context of this particular protest and that the BBC had a duty to try to make such details clear, especially when dealing with an area as sensitive as the relationship between Israel and its neighbours.
- that the interview breached the Accuracy guidelines on “clear, precise language” in that it implied that the occupied Golan Heights were part of Israel.
- that this breach of the Guidelines was inadvertent and was not knowingly misleading, and it did not raise any issues in relation to impartiality.

The complaint was upheld.

For the finding in full see pages 19 to 32.

Appeal Findings

In Touch, BBC Radio 4, 21 February 2012

1. Background

In Touch is a weekly magazine programme broadcast on BBC Radio 4. It contains news, views and information for people who are blind or partially sighted. This edition's theme was relocation, and the report in question was a product review from the perspective of how an iPhone might make relocation easier. It took the form of a discussion between a visually impaired presenter and a visually impaired iPhone user (a regular *In Touch* contributor), who had been "road-testing" Apple's voice-activated "Siri" app and who demonstrated some of its features.

2. The complaint

Stage 1

The complainant, who brought the complaint on behalf of the Open Source Consortium (the trade body representing the Open Source business community in the UK), complained that the report had given an extended and uncritically positive exposition of Apple's iPhone 4S and Siri. The complainant argued that, whereas an item about voice recognition technology would have been appropriate and helpful, this item amounted to sponsored content. Citing a recent Advertising Standards Authority (ASA) decision⁴ in which the ASA had found that potential UK purchasers were likely to be unaware of the greater extent of Siri's functionality in the USA, the complainant expressed concern about the report's section on checking the weather, as this was one of the few location services that were available via Siri in the UK. In the complainant's view, Siri was likely to disappoint users unless they were speaking US English⁵ in the USA. The complainant concluded that, even if Siri were unique (which it was not), the programme makers had failed to exercise due diligence.

In its initial Stage 1 response, BBC Audience Services noted that this edition concerned how blind people found local places and amenities, and that the presenter had said that he found Siri useful. BBC Audience Services also noted that the report had stated that Siri was not yet perfected and that, although it was not specifically for blind or poorly sighted people, it would be useful to them. According to BBC Audience Services, this was not an advertisement, as the BBC did not carry advertising.

In addition, BBC Audience Services noted that "product placement" was defined by Ofcom as the inclusion of, or reference to, a product or service within a programme in return for

⁴ The ASA had not upheld a complaint in which the complainant had argued that Vodafone's online advertisement for Siri had failed to make it sufficiently clear that Siri's map-based functionality worked only in the USA. The ASA took the view that the average UK user would not have had prior knowledge of what Siri was reportedly able to do in the USA. As the advertisement in question had not explicitly or implicitly made claims relating to map-based functionality, it was held not to have been misleading. See: www.asa.org.uk/ASA-action/Adjudications/2012/2/Vodafone-Ltd/SHP_ADJ_177010.aspx

⁵ This was a reference to Siri's reported difficulty in recognising Scottish accents. See, e.g.: <http://articles.latimes.com/2012/jan/31/world/la-fg-scotland-siri-20120131>

payment or other valuable consideration,⁶ whereas the BBC had not received any remuneration for including the report or mentioning the software. BBC Audience Services concluded by noting that the report had mentioned a number of drawbacks with Siri.

In his follow-up reply, the complainant provided a link to a fuller statement of complaint on the Open Source Consortium website. This statement quoted the Royal National Institute of Blind People (RNIB)'s view that:

"blind and partially sighted people of working age ... are already amongst the most vulnerable and poorest in the country".⁷

The Open Source Consortium argued that there ought to have been good reason for *In Touch* to direct such an audience to a premium product costing £499.99 to buy, or £37.00 per month for two years to get 'free'.⁸

The Open Source Consortium argued that the *In Touch* report had breached the BBC's Editorial Guidelines on product prominence, not least because there was a link to the Apple website from the *In Touch* webpage.⁹ The statement also raised concerns about the contributor in the report by the BBC.

The Open Source Consortium cited online reports of two class action lawsuits in the USA concerning the accuracy of advertisements for Siri. The statement also quoted an online article,¹⁰ which reported on speculation that the perceived recent deterioration in the quality of Siri's results was attributable to Siri's popularity, which meant that Apple now had less time and processing power available to calculate Siri's answers.

In its follow-up response, BBC Audience Services quoted the programme's Senior Producer:

- The programme team had decided to look at Siri because it was the first mass-market voice-activated assistant available on a smartphone and was "by far and away the market leader". The programme team felt it was a core part of its agenda to reflect key technological developments which impacted on the life of people who were blind and visually impaired.
- The report was a critique of Siri and how it worked, and was not wholly positive. It had discussed how Siri did not work so well sometimes.

⁶ This was a paraphrase of section 9 of the Ofcom Broadcasting Code. See: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references-television/>.

⁷

<http://www.rnib.org.uk/getinvolved/campaign/inparliament/Documents/ComprehensiveSpendingReviewRNIBbriefing.doc>

⁸ These figures corresponded to O₂'s prices for a black iPhone 4S 16GB. See: http://shop.o2.co.uk/mobile_phone/pay_monthly/init/Apple/iPhone_4S_16GB_Black

⁹ <http://www.bbc.co.uk/programmes/b01c7pr7#related-links>

¹⁰ <http://www.cultofmac.com/151935/why-the-new-ipad-doesnt-have-siri/>

- The programme team tried to make the information in the programme as accessible as possible for those who had difficulty in navigating the internet, which was why a link had appeared on the programme's webpage.
- Smartphone technology was a subject that *In Touch* often looked at, and at some point in the future the programme would return to look at other voice-activated assistants, once they became more mainstream.

Stage 2

The complainant reiterated a number of previous points of complaint and criticised certain perceived failings in BBC Audience Services' responses. In the complainant's view, the presentation of Siri's functions was poorly researched and misleading, and while the report had acknowledged that Siri was not perfect, its upbeat tone had created a positive impression and down-played Siri's shortcomings. The complainant quoted a review on a technology website,¹¹ which suggested that, contrary to Apple's claims, Siri's responses to informal commands were erratic and unreliable.

The complainant disputed that the Senior Producer's description of the iPhone as "by far and away the market leader" was relevant to the issue of editorial justification, and cited four webpages which he believed contradicted this claim in any event. The complainant noted that his original complaint had referred to "free-as-in-beer"¹² alternatives to Siri.

The complainant also raised concerns about certain alleged financial activities on the contributor's part.

The ECU considered the complaint against the Editorial Guidelines on Editorial Integrity and Independence from External Interests (particularly those on Product Prominence), and Accuracy. In the ECU's view, the inclusion of the piece was editorially justified, as Siri was an interesting and widely available (albeit relatively expensive) technology of which the potential uses for partially sighted or blind people were apparent. The ECU regarded the iPhone's market status as irrelevant to the issue of editorial justification.

The ECU did not agree that the report had "plugged" Siri (i.e. given the impression that the programme makers or the BBC endorsed or were promoting it), as, while reflecting its benefits to blind and partially sighted people, the report had also demonstrated its failings and limitations:

- Although the contributor had spoken positively about Siri, he had also warned listeners not to assume that it was tailor-made for the needs of the blind and partially-sighted.
- The demonstration had included a clip of Siri failing to recognise a location.
- The report had demonstrated Siri's fallibility in failing to recognise relatively simple questions and offering nonsensical answers.

¹¹ <http://arstechnica.com/apple/2011/10/iphone-4s-a-siri-ously-slick-speedy-smartphone/>

¹²

http://en.wikipedia.org/wiki/Gratis_versus_libre#.22Free_beer.22_vs_.22free_speech.22_distinction

For these reasons, the ECU disagreed that listeners would have gained an overwhelmingly upbeat or positive overall impression; nor did the ECU agree that the report amounted to a promotion, or that the product was unduly prominent.

In the ECU's view, while information on other voice recognition technologies (e.g. those available on Android devices) would have been interesting and might have made the piece more informative, it did not follow that without such information the piece was imbalanced or amounted to a promotion. The ECU's research suggested that other voice-recognition technologies did not perform quite the same functions as Siri.

The ECU was not convinced that due accuracy would require a relatively brief product review to mention all the faults or potential faults that had been highlighted elsewhere. The ECU noted that the report had mentioned Siri's failure to recognise basic requests and the dearth of useful geographic data for non-US users. Although listeners might have found additional criticisms interesting, the ECU did not think that they would have expected such an informal review to be exhaustive or anything more than one person's opinion. The ECU could not therefore conclude that, without reference to additional criticisms, the item was misleading.

In the ECU's view, there was no evidence to support the concerns raised by the complainant about certain alleged financial activities on the part of the contributor.

In ensuing correspondence, the complainant asked for guidance or precedents on the application of what he termed the Editorial Guidelines' "threshold test" in relation to product promotion. In response, the ECU referred to the wording of Editorial Guideline 14.4.4, noting that the guideline did not precisely define "undue" prominence (other than saying that this would give the impression of endorsement or promotion), and explaining that decisions must therefore be taken on a case-by-case basis. The ECU provided a link to the Trust's decisions on appeal, noting that it could not recall a complaint of this nature having been upheld recently.

The ECU concluded that the complainant's allegations with regard to the contributor were entirely unsupportable.

The complainant also drew the ECU's attention to the link to Apple's website from the *In Touch* webpage. The ECU did not believe that this constituted undue promotion; in the ECU's view, it was reasonable to include links that related to the matters discussed on the programme.

Stage 3 – Appeal to the Editorial Standards Committee

The complainant argued that the ECU had disassembled and dismissed his evidence piece by piece, whereas the complaint was holistic in nature and raised the following factual and counter-factual questions:

- What would an example of undue prominence look like?
- What would an example of prominence that was not undue look like?

In the absence of guidance or precedents on any "threshold test" on undue prominence, the complainant (noting past *Blue Peter* practice of concealing the branding of adhesive used in craft projects) asked whether the *Caesar's wife* – i.e. "beyond suspicion" – test applied.

The complainant cited with approval the final item in the 18 June 2012 edition of Radio 4's *You and Yours*,¹³ which concerned a sign language translation device for deaf people. In the complainant's view, the product was discussed there in a manner that took into account all the issues that the *In Touch* report had not addressed. The *You and Yours* discussion had included one of the product's inventors and the Head of Technology, National Deaf Children's Society. The item spanned the product's benefits and limitations, both for technology and price, and was a critical appraisal. It was informative and, while drawing attention to a single product, did not give the impression of selling or promotion. In the complainant's view, the *You and Yours* item provided a baseline for prominence that was not undue.

3. Applicable Editorial Guidelines and Guidance

Accuracy

3.1 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.

... Where appropriate to the output, we should: ...

- corroborate claims and allegations made by contributors wherever possible.

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.

Editorial Integrity and Independence from External Interests

14.2.3 We must not give undue prominence to commercial products or services.

14.2.4 There must be no product placement in programmes.

14.2.5 On-air and online credits must be clearly editorially justified.

14.4.4 We need to be able to reflect the real world and this will involve referring to commercial products, organisations and services in our output. However, we must avoid any undue prominence which gives the impression that we are promoting or endorsing products, organisations or services. To achieve this we must:

- ensure that references to trade names, brand names and slogans are clearly editorially justified

¹³ <http://www.bbc.co.uk/programmes/p00tzbq3>

- not linger on brand names or logos and use verbal references sparingly unless there are very strong editorial reasons for repeated references to a brand
- not accept free or reduced cost products or services in return for on-air or online credits, links or off-air marketing
- take particular care to minimise product references in output designed to appeal to children
- only use material from advertising campaigns or promotions when clearly editorially justified. Generally, it will only be acceptable to use a short extract. There may also be copyright considerations.

14.4.10 We must ensure there is no element of plugging when we review products or services. We should review a range from different suppliers.

Conflicts of Interest

15.4.29 In some cases the commercial activities or interests of presenters and other on-air talent could lead to a conflict of interest...

In some cases, particularly for presenters of journalistic or factual programmes, commercial interests may be deemed incompatible with their on-air role.

Guidance

Links and Feeds

Links to External Sites

Part of the BBC's role is to act as a Trusted Guide on the web. Whenever producers are creating content on a BBC site, they should actively consider which external websites it may be editorially justifiable to link to.

Editorial Justification for Linking to External Sites

Producers may wish to offer links to external sites for a number of reasons, including:

- for further relevant information
- for further background information or other key source material
- for useful practical information
- for further informed comment

A link must never be included on the public service site or within the editorial content of a commercial site in return for cash, services or any other consideration in kind.

All links on the BBC public service site or on the editorial pages of a commercial site must be editorially justifiable.

Links are not acceptable as a form of credit.

Criteria for Linking to External Sites or Other Content

Criteria for linking to third party sites will vary to some extent depending on the reason for offering the link.

In general terms, the external site should:

- be relevant to the BBC content from which a link is envisaged

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 of the available evidence, including (but not limited to) the Editorial Adviser's report, and the subsequent submissions from the complainant.

The Committee noted that this appeal raised the following allegations for consideration:

1. The report was inaccurate and misleading in its coverage of Siri's functionality.
2. The product was unduly prominent.
3. The report amounted to product placement.
4. The report amounted to a promotion or endorsement.
5. The report amounted to a plug for the product, and made no mention of similar products from other suppliers.
6. The link to Apple's website from the programme's webpage lacked editorial justification, was unduly prominent and amounted to a promotion or endorsement.

The complainant also raised an allegation relating to the Guidelines on Editorial Integrity and Independence from External Interests

Point 1 – Accuracy

The Committee noted that the complainant had described the report as an "extended and uncritically positive exposition of Apple's iPhone 4S and ... 'Siri'" and had argued that the report was inaccurate and misleading in that it had:

- failed to make sufficiently clear the limitations in the UK of Siri's map-based location services
- focused unduly on the weather (this being one of the few location services available to UK users)
- failed to refer to reports that Siri's performance was becoming increasingly poor
- failed to mention Siri's alleged difficulty in recognising commands by speakers of non-US English

- failed to mention online reviews casting doubt on Apple’s claim that Siri could respond to informal commands in natural language.

The Committee also noted that the report had not mentioned other criticisms of Siri, such as:

- unfavourable comparisons with equivalent voice-activated assistants for Android, in terms of speed and accuracy
- the alleged selectivity of certain of Siri’s results
- Siri’s occasional unavailability.

The Committee noted the ECU’s conclusions that due accuracy did not require a relatively brief, informal product review to mention exhaustively all the faults or potential faults that had been highlighted elsewhere; that the report’s coverage was far from overwhelmingly positive; and that the item would not have misled listeners.

The Committee also noted that the report had mentioned that Siri was not designed for blind or partially sighted people, that it was still in development, and that its location services were more limited in the UK than in the USA.

In the Committee’s opinion, this was not a glowing review. The report had contained positives but it had also contained reservations and criticisms of Siri and had acknowledged several shortcomings. The report had also shown that Siri could offer a ridiculous reply when it was unable to answer a question, demonstrating the unreliability of its responses in certain circumstances.

The Committee noted that *In Touch* was not a consumer affairs programme, nor was it aimed at a general audience. In the Committee’s view, the report had highlighted the features and shortcomings of Siri that were likely to be of particular interest to visually impaired listeners. Moreover, due accuracy did not require a product review from a visually impaired user’s perspective to scrutinise each and every pro and con of the product in question. The information provided was adequate and appropriate to a product review.

The Committee therefore concluded that the report was duly accurate and was not misleading. The Committee did not uphold the appeal on this point.

Point 2 – Undue prominence

The Committee noted that the report was the final item in a 20-minute programme and lasted approximately seven minutes, or 35% of the programme’s duration, and that the presenter had stated in his introduction that he had found a certain iPhone app helpful and had described the piece as “a report on what might make future relocation easier”.

The Committee also noted the Open Source Consortium’s online statement that “This one looks like it breaches editorial guidelines on product prominence ...”, together with the complainant’s statement in his appeal to the Trust that the item “gave undue prominence to a company and its products”.

The Committee also noted the ECU’s view that the Editorial Guidelines did not precisely define undue prominence. However, it noted that the guideline on product prominence makes clear that undue prominence would give the impression of endorsement or

promotion and steps are set out in that guideline which assist programme makers in avoiding giving the impression that products have been given undue prominence. The Committee noted the complainant's view that there is a need for greater clarity around undue prominence. The Committee accepted that Guideline 14.2.3 states a broad principle and calls for a degree of subjective judgment in its application. However, the Committee agreed that, given the broad range of BBC content to which it applies, the BBC could not set down precise and comprehensive rules as to what does or does not constitute "undue prominence" in every possible scenario; context is all-important and other principles may be part of the mix when deciding whether the content in question is compliant with the Guidelines. The Committee therefore did not agree with the complainant's assertion that further guidance is needed as to the scope and application of the Guidelines in this respect.

While noting the content of the final item in the 18 June 2012 edition of BBC Radio 4's *You and Yours*,¹⁴ which the complainant had cited, the Committee did not find it helpful to compare that item with the report in question, as the two items and the programmes in which they were broadcast were dissimilar in character, and different editorial considerations applied to each. In particular:

- *You and Yours* is a consumer affairs programme aimed at a general audience, whereas *In Touch* is a special-interest programme aimed at visually impaired listeners
- the *You and Yours* item was a discussion, with contributions from a manufacturer and an expert commentator, whereas the *In Touch* item was a user review
- the *You and Yours* item concerned a device that was still in production, whereas the *In Touch* item concerned a product that was on the market.

The Committee also noted the content of the interview with the Head of Editorial Standards, Audio & Music, in the 28 September 2012 edition of BBC Radio 4's *Feedback*, which the complainant had also cited. That item had concerned on-air references to, and the BBC's relationship with, commercial organisations in general and Facebook and Twitter in particular. While the Committee noted with interest the complainant's detailed critique of the Head of Editorial Standards' responses, it did not consider that the issues the complainant had raised in relation to that interview would help resolve the question of whether this particular item – a product review in a programme aimed at a specialist audience – had breached the Editorial Guidelines on undue prominence.

The Committee noted that, at the date of broadcast, Siri was not the only available voice-activated assistant, and that similar products included:

- Google's Voice Actions for Android
- Microsoft's Tellme for Windows Phone
- Iris for Android
- Evi for iPhone and Android

¹⁴ <http://www.bbc.co.uk/programmes/p00tzbq3>

- Speaktoit Assistant for iPhone, Android and Windows Phone
- Vlingo for iPhone, Android, Blackberry and Windows Phone
- Edwin for Android.

The Committee also noted Apple's claim that Siri was unique because, unlike its competitors, Siri's natural language interface allowed users to control it through plain English commands, and it could also request clarification. The Committee also noted that the report had vividly demonstrated Siri's shortcomings in this regard.

In the Committee's view, a review of a single product did not *per se* amount to a breach of the Editorial Guidelines on undue prominence, provided that the mentions of the product were clearly editorially justified. The Committee was satisfied that the report had included both positive and negative comments about Siri and that the impression was not given that the BBC endorsed Siri. Mentions of Siri in this product review had been clearly editorially justified. Verbal references to Siri in a product review were both to be expected and appropriate. This was a product of specific interest to the audience because of its plain English voice command feature. This had not breached the Guideline on undue prominence.

The Committee did not uphold the appeal on this point.

Point 3 – Product placement

The Committee noted Guideline 14.4.1 of the Editorial Guidelines which explains that

Product placement is the inclusion of, or a reference to, a product or service in return for payment or any consideration in kind.

The Committee noted that it had not seen any evidence to indicate that the review of Siri had been included in the programme for a commercial purpose, or that any payment had been made or other valuable consideration given to the BBC in return for the review.

The Committee concluded that references to Siri in the report did not amount to product placement.

The Committee did not uphold the appeal on this point.

Point 4 – Promotion or endorsement

With regard to the question of whether (as required by Guideline 14.4.4) references to Apple, the iPhone and Siri were clearly editorially justified, the Committee noted the complainant's argument that it was inappropriate for the programme to have reviewed an expensive, premium product for visually impaired listeners, who, according to the RNIB, were among the most vulnerable and poorest in the country.

The Committee also noted the complainant's argument that the iPhone was not the market leader as the Senior Producer had claimed, together with the evidence he had cited in support of this assertion. The Committee also noted the ECU's view that the iPhone's market status was irrelevant to the issue of editorial justification.

The Committee also noted that the RNIB website stated:

The latest iPhone, the 4S includes a feature called Siri which acts as a kind of personal digital assistant or butler in your pocket. You can ask Siri all sorts of questions like "What's the weather like in Manchester today?" or "how many centimetres are there in two hundred feet?"

Siri combines voice control with artificial intelligence and can be very helpful for a blind or low vision person when used with VoiceOver [a built-in screen reader]. Siri and the in built dictation button on the iPhone 4S also allow you the chance to compose and send SMS and email using just your voice.¹⁵

The Committee noted that Siri was a relatively new product (having been released four-and-a-half months before the date of broadcast), had certain features which seemed to the Committee to be potentially helpful to visually impaired listeners, and had been described by the RNIB as potentially "very helpful for a blind or low vision person" in certain circumstances. For these reasons, the Committee concluded that references to Siri were clearly editorially justified in this context.

Having reached this conclusion, the Committee did not consider it necessary to ascertain Siri's market share at the date of broadcast or to determine its relevance (if any) to the issue of editorial justification.

The Committee was clear that on-air credits are made by the broadcast industry in exchange for being provided with something and that there was no evidence to suggest the BBC had been provided with anything in exchange for credits. Guideline 14.2.5 was not engaged.

The Committee did not uphold the appeal on this point.

Point 5 – Plugging

The Committee noted the presenter referred to his own iPhone when introducing the report and it was of the view that this was generally better avoided. However, the Committee appreciated that in the case of *In Touch* this was part of the presenter's engagement with the specialist audience. He and they encountered similar issues in daily life and he shared his own experiences with them.

With regard to the requirement in Guideline 14.4.10 that a range of different suppliers' products and services should be reviewed the Committee felt it would have been helpful if the introduction to the report had placed Siri in the context of the wider market for voice-activated mobile apps, by mentioning the availability of similar products that might also have been of use to listeners (although without necessarily naming those products).

The Committee noted, however, that the 3 January 2012 edition of *In Touch* (broadcast seven weeks before the programme in question) had been devoted to a wide-ranging review of smartphone technology, including the Ice Cream Sandwich iteration of the Android operating system. The Committee also noted the Senior Producer's statement that *In Touch* often looked at smartphone technology, and her assertion that the programme would return to look at other voice-activated assistants in the future.

For the reasons given above and having decided: under Point 2 that the product was not unduly prominent; under Point 3 that this was not product placement; and under Point 4

¹⁵ <http://www.rnib.org.uk/livingwithsightloss/computersphones/guides/Pages/phones.aspx>

that references to Siri were clearly editorially justified and the review was not a promotion or endorsement of Siri, the Committee concluded that the question of plugging necessarily fell away.

The Committee did not uphold the appeal on this point.

Point 6 – Link to iPhone 4S webpage

The Committee noted the complainant's argument that the link to the iPhone 4S webpage of the Apple website from the *In Touch* webpage had breached the BBC's Editorial Guidelines on product prominence.

The Committee also noted the Senior Producer's argument that the *In Touch* production team tried to make the information contained in the programme as accessible as possible for those who had difficulty in navigating the internet, and that this was why a link to the iPhone 4S webpage had been provided.

The Committee also noted the ECU's view that it was reasonable to include links which related to the matters discussed on the programme.

The Committee also noted that the BBC's Guidance on Links and Feeds acknowledges that Producers might wish to offer links to external websites for a number of reasons, including for further relevant information, for further background information or other key source material, or for useful practical information. The Committee also noted that, according to the Guidance, all links on the BBC public service site must be editorially justifiable and relevant to the BBC content from which a link is envisaged, and that links are not acceptable as a form of credit. The Committee also noted that the Guidance on Links and Feeds does not expressly prohibit links to commercial websites.

The Committee noted that the webpage for the 3 January 2012 edition of *In Touch*¹⁶ (which had reviewed a wide range of smartphone technology) included links to the websites of a number of commercial organisations whose products had been discussed in that edition, namely:

Mobile network and phone providers

- Vodafone
- O2
- Orange
- T-Mobile

Phone brands, manufacturers and models

- Ericsson
- HTC
- Nokia (Nokia C5, Nokia 700, Nokia 701)
- Samsung Galaxy Nexus running Android 4.0 Ice-cream Sandwich:

Screen Readers

- Nokia Screenreader
- Talks Screen Reader and Magnification software
- Talk Back for Google Android 4.0:
- Explore By Touch for Android 4.0:
- VoiceOver for iPhone

¹⁶ <http://www.bbc.co.uk/programmes/b018xs8r>

The Committee noted that, in addition to the link to the iPhone 4S webpage, the *In Touch* webpage for the 21 February 2012 edition included links to the Facebook page, Twitter account and website of national sight-loss charity *Action for Blind People*, together with a link to the transcript of the programme. Noting that Apple was the only commercial organisation to have been given a link from that webpage, the Committee inferred that this was because the iPhone 4S was the only commercial product to have been discussed in the 21 February 2012 edition of *In Touch*.

The Committee noted that, according to the Guidance on Links and Feeds, criteria for linking to third-party sites will vary to some extent, depending on the reason for offering the link. The Committee took the view that the criteria for linking to commercial sites were clearly satisfied where (as in this instance) the links might be helpful in meeting the particular needs of a specialist audience such as visually impaired persons.

In the Committee's view, there was potential public value, particularly to visually impaired persons, in all the links that were provided on the webpage for the 21 February 2012 edition of *In Touch*, since all the websites provided further information that was both relevant to the content of the programme and potentially useful. The Committee considered that the link to the iPhone 4S webpage was likely to be helpful to partially sighted persons who were seeking more information about Siri and the iPhone 4S and who had particular access needs when navigating the internet.

The Committee also noted that it had not seen any evidence to suggest that the link in question had been included on the webpage in return for cash, services or any other consideration in kind. In the Committee's view therefore, the link to the iPhone 4S website was not a form of credit.

For the reasons set out above, the Committee concluded that the link was clearly editorially justified. Given the direct editorial relationship to the content of the programme, the Committee did not consider that the inclusion of the link to the Apple website gave the impression of an endorsement and therefore this did not constitute undue prominence.

The Committee did not uphold the appeal on this point.

Point 7

The Committee also considered an allegation made by the complainant relating to the Guidelines on Editorial Integrity and Independence from External Interests. The Committee noted that the contributor had categorically denied this allegation and that, eight days before the hearing of this appeal, in correspondence with the Trust Unit, the complainant had clarified the nature of the original allegation. The Committee concluded that the complainant had not adduced compelling evidence of a breach of the Guidelines on Editorial Integrity and Independence from External Interests in respect of either the original or the clarified allegation and did not uphold the appeal on this point.

Finding: Not upheld.

Today, BBC Radio 4, 16 May 2011

1. Background

The *Today* programme is a live early morning news and current affairs programme broadcast on BBC Radio 4 six days a week.

This edition of the *Today* programme featured, at 7.30am, an interview with Husam Zomlot, Deputy Commissioner of the Fatah International Affairs Commission and Mark Regev, an Israeli Government spokesman, about the Nakba Day protests when demonstrators in several countries commemorated Nakba Day by marching on land held by Israel but where the land/boundaries are disputed. Israeli forces opened fire at protestors at the boundaries of that land and the Occupied Palestinian territories, Syria and Lebanon. Reports claimed that 12 people were killed and dozens more injured.

Nakba ("catastrophe") Day is the term used by Palestinians to refer to the day which commemorates the period when hundreds of thousands of Palestinians fled or were forced out of their homes as the new Israeli state was created and the subsequent period of exile

2. The complaint

The complainant raised an issue with regard to the accuracy of the programme.

Stage 1

The complainant wrote to the BBC to say that the presenter, John Humphrys, stated that Palestinian and other Arab protestors "...actually crossed over the border into Israel", restated "...you march up to and in some cases across (the Israelis') border..." and again asked "(how would you feel if) I marched into your house...?"

The complainant said there was no question in international law of the Golan Heights and Majdal Shams, the main village involved, being the "border" of the state of Israel. He added that by suggesting this was Israel's border, the presenter had wiped part of an Arab country (Syria) off the map and misled the audience as to the nature of the demonstrations. He asked for a response about the BBC's lack of consistency and wanted to know if the Golan Heights were, as according to the BBC News website, "occupied" Syrian territory or, as according to John Humphrys, Israeli territory?

The Assistant Editor of the *Today* programme replied to the complainant on 3 June 2011. He said that the Golan Heights were captured by Israel from Syria in 1967 and the line was included in a separation of forces agreement worked out by Henry Kissinger after the 1973 war. In the strictest sense it is probably best described as a boundary rather than a border but this would not have changed the main thrust of either interview. John Humphrys explicitly made clear that his main concern was to establish the level of violence used by both sides and whether it was proportionate to the circumstances, rather than rehearsing the arguments about territorial rights in the area. Land rights and the law are key to any peace settlement but on this occasion they were keen to press the Palestinian representative on the behaviour of the protestors and the Israel Government spokesman on the response of the military. The Palestinian guest spoke about a "border" and was given the opportunity to make the point about the legal status of the land the demonstrators were marching through.

The complainant replied. He said the reply did not answer his original complaint, which was not that the presenter had used the word "border" but rather that he had referred to the line as Israel's border and had stated "actually crossed over the borders into Israel" and "their borders". He said that substituting boundary for border would not have changed the tenor of the interview so long as the misstatement that the Golan is Israel's territory was maintained: "actually crossed over the boundary into Israel carries the same factual inaccuracy upon which my complaint was based".

He said that the implication was that Israeli military forces potentially had the right to use force because they were defending their own territory. He said this point was clear from Mr Regev's defence: "there were thousands on the border with Syria trying to break into Israel..." If however one made clear that the Golan is not Israeli territory the strength of Mr Humphry's questioning of Mr Zomlot would be diminished. Or rather the Israeli spokesperson would quite correctly have been forced to defend his military's use of lethal force against unarmed protestors in territory it has no right to control."

The BBC response said that, while reporting on borders which were disputed by different regions, the presenter was reflecting on why Israeli forces thought they could defend their actions. The response said this was not a case of the presenter being biased but opening a topic for discussion which might have included an explanation from the other side of the dispute.

The complainant wrote again complaining about a BBC news online site covering the same story. The Middle East Editor, BBC News website also replied and acknowledged that the Golan Heights was territory occupied by Israel since 1967 and said he had referred the complainant's correspondence to the *Today* programme.

In its next response, addressed from BBC Complaints, the BBC said they did not agree that the presenter's description of the demonstrators "crossing borders" showed bias or was inaccurate. The response added that the state of Israel, as recognised by the United Nations and the international community, was Israel minus the territories occupied in 1967 – the West Bank, Gaza and the Golan Heights. It said that this was the standard term used in journalism and diplomacy to refer to the lines, frontiers or borders, even though the Green Line and the ceasefire line that demarcated the territory and Israel's annexation of the Golan Heights in 1981 had not been internationally recognised. The response concluded that the Foreign and Commonwealth Office and the US State Department websites also used the phrases "1967 border" or "borders of 1967."

The complainant replied saying he did not understand the logic of the argument in the response from BBC Audience Services. The complainant said he had not made a complaint about the description of the state of Israel as being recognised to lie within its pre-1967 borders and indeed agreed with this. The complainant said that most journalists agreed that Israel's legitimate borders were those it had prior to the war of 1967.

The complainant went on to say that BBC Audience Services seemed to be saying that the presenter was referring to the 1967 borders when he said that protestors "crossed the borders" and therefore the complainant's view that these were not borders was not valid.

The complainant said that this was precisely the point of his complaint; the "line" or "boundary" crossed by the protestors at Majdal Shams was not the 1967 border. If the protestors had crossed the 1967 borders, the complainant said he would not have made

the complaint but the protestors did not cross the 1967 borders, they crossed the line marking Israeli control of the Occupied Golan Heights and, therefore when the presenter referred to this as "Israel's border" he and not the complainant had departed from the "standard term" and asserted a recognition of the Golan as constituting the state of Israel (which BBC Audience Services had said had not been given).

The BBC said it understood that the complainant was unhappy with the use of the term "border" as he felt it was inaccurate, but added that the programme team said that the Golan Heights had been captured by Israel from Syria in 1967 and the line was included in a separation of forces agreement worked out after the 1973 war. The programme team said that in the strictest sense it was probably best described as a "boundary" rather than a "border."

However, the programme team believed that changing the word "border" for "boundary" would not have altered the main thrust of either interview. The presenter had made it clear his main concern was to establish the level of violence used by both sides and if it was proportionate in the circumstances.

The programme team added that the Palestinian guest had spoken about a "border" and during the interview had been given the opportunity to make the point about the legal status of the land the demonstrators had been marching through.

Stage 2

The complainant then wrote to the Editorial Complaints Unit (ECU) to escalate his original substantive complaint and to make a new complaint about complaints handling, in that he believed the BBC had failed to be "open in acknowledging mistakes when they are made" and had "failed to acknowledge serious factual errors or to correct them quickly, clearly and appropriately" (in contravention of Editorial Values 1.2.11 and sections 3.2.4 and 3.4.26 of the BBC's Editorial Guidelines).

He enclosed a map, which he hoped would make it clear that his complaint was not a semantic issue but a straightforward case of factual inaccuracy.

In its first substantive response, the ECU did not find the programme had breached the Accuracy guidelines on the grounds that the protests involved demonstrators in several countries who marched on the borders of Israel to commemorate Nakba Day. The ECU said the only place they were able to cross into Israeli-occupied land was the Golan Heights, where more than a hundred bypassed or breached the fence marking the ceasefire line and arrived at Majdal Shams. The ECU said there was also some evidence that some of those who crossed the ceasefire line near Majdal Shams were able to travel into Israel. The ECU added it was the actions of the majority of the protestors in the areas in breaching the ceasefire line and reaching Majdal Shams that was at issue.

The ECU said that, as the complainant had noted, the Golan Heights was recognised internationally as Syrian territory which was controlled by Israel. The ECU agreed that the references to protestors having crossed borders into Israel were therefore inaccurate.

However, the ECU added that it was not convinced that the inaccuracy would have misled listeners and said the BBC Guidelines referred to "due accuracy". The ECU said the interview was not about the status of land occupied by Israel, but about the Israeli response to the actions of the demonstrators on Nakba Day. This was the focus of both

interviews in the programme. The ECU said that given the context, it seemed that the extent to which listeners would have looked to the interview for information on the borders of the state of Israel would have been somewhat diminished.

The ECU said that from the point of view of the Israeli security forces, the distinction between Israeli land and land occupied and governed by Israel would have been academic. The ECU said that despite the international consensus on Syria's sovereignty, the Israelis would have viewed the act of crossing the boundary as infiltration into Israel and would have regarded the acts of the protestors as a security threat.

The ECU noted that the BBC Guidelines also talked about the importance of reflecting relevant opinion. The ECU said while the Palestinian representative did not challenge the reference to borders and did not explicitly address the specific question of the Golan Heights, he did respond in a way which would have gone some way to reflecting the views of the demonstrators as to the ownership of the land that was marched upon in the Golan Heights and elsewhere.

The complainant replied asking for clarification on several points. He said he did not understand the ECU's reasoning for not upholding his complaint on the grounds of accuracy as it had clearly acknowledged there was inaccuracy. The complainant said the grounds for the decision seemed to rely on the terms "due accuracy" and "mislead". The complainant said this implied that broadcast items that were actually inaccurate could be considered to be accurate in cases where listeners were not going to look for accuracy within a particular area.

The complainant also said he disagreed with the ECU conclusion that the audience would not have been looking to understand the status of the land occupied by Israel and the borders of the state of Israel. The complainant said that where Syrians were murdered trying to get to their homes in Syrian territory occupied by Israel, it could hardly be considered irrelevant that the territory was Syrian and was occupied by Israel.

The complainant said that if the status of the land had been referred to accurately, the Israeli spokesman would have been forced to defend his military's use of force against protestors in territory it had no right to control.

The complainant also:

- requested that he be provided with an explanation of the relevance of "the point of view of the Israeli security forces" (to which the ECU had referred) to the question of whether the *Today* programme was duly accurate or whether it had misled its audience.
- requested that he be provided with assurances that, in future, presenters would be sufficiently briefed so they could avoid misleading audiences.
- made it clear that he took issue with the ECU's point that Dr Zomlot did not take the opportunity to challenge the reference to borders. The complainant said Dr Zomlot was not Syrian, but a representative of a Palestinian political party. The complainant queried whether the BBC would request the opinion of a French Parti Socialiste spokesperson on a breach of Spanish sovereignty.

The ECU replied saying it did not believe the guidelines were intended to be used to permit flagrant inaccuracies (as the complainant had implied) and it again defined "due

accuracy" as written in the guidelines. The ECU said it took this to mean that any judgment regarding the possible consequences of a degree of inaccuracy should take the full context of the broadcast into account, rather than considering a part of it in isolation.

The ECU went on to say that while it agreed that more information on the status of the land would have been helpful to audience understanding, it believed the interview was not about the status of land occupied by Israel, but about the Israeli use of force in response to the actions of the demonstrators on Nakba Day. The ECU added that it believed that the wording used reflected the Israeli perspective that in security terms the line that was crossed constituted a border and therefore infiltration into Israel.

The ECU said it considered the interviews with Dr Zomlot and Mr Regev covered the protests as a whole. The ECU said that nothing the presenter or Dr Zomlot said made explicit references to the Golan Heights. The ECU said it agreed that, for anyone with knowledge of the events of the day, this was the implication of what was said but it did not amount to an unambiguous assertion along the lines the complainant suggested.

The ECU added that in broad terms it believed that listeners would have been aware of the disputed status of much of the land on the perimeters of the state of Israel and it did not believe that "due" accuracy required that the status of such territories must always be explained in reports about other aspects of the conflict.

The ECU said that Dr Zomlot had said that the land that the protestors were marching on was theirs to begin with:

"These people are marching to their homes, they have the deeds of their homes. It's their private property."

Dr Zomlot had also said that the demonstrators had marched towards the borders which seemed to suggest that he did not consider this to be a vital distinction in the context of the discussion.

The ECU said that it did not believe that the segment was inaccurate but that one reference in one question was inaccurate. Nor had it said that the question of borders had no relevance but that the extent to which listeners would have looked to the interview for information on the borders of the state of Israel would have been somewhat diminished.

The ECU agreed that it would have been clearer if, in connection with the intentions of the protestors, it had said in its previous response that they were marching towards Israel at the point where their forces controlled a boundary.

The ECU concluded by saying that while it agreed it would have been better to have clarified the nature of the incursion referred to, it remained of the view that this did not constitute a serious breach of the BBC's editorial standards.

Stage 3 – Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 30 May 2012.

The complainant said that the interview on BBC Radio 4's *Today* programme about Nakba Day 2011 was inaccurate and misleading as the presenter said that protestors at Majdal Shams, a village in the Occupied Golan Heights, "actually crossed over the borders into

Israel" and (in an interview with a Palestinian contributor) also used the words "march up and in some cases across their [Israeli] borders". The presenter also said "...if I marched into your house...?"

The complainant said that the presenter "explicitly and implicitly referred to the protestors crossing 'Israel's border' and entering the state of Israel". However, the complainant said, the boundary crossed was not Israel's border and the territory entered was not Israel and that those killed were not killed in Israel. [The words "Israel's border" are not used in the item but are implied. Majdal Shams and the Occupied Golan Heights are not mentioned explicitly but are referred to implicitly.] The complainant said that, given that the ECU had acknowledged that "references to protestors having crossed borders into Israel were ... inaccurate" and that "... it was inaccurate to refer to the line crossed by protestors as the Israeli border" he did not understand why his complaint had not been upheld. The complainant said that the item was materially misleading and not duly accurate.

The complainant said that, as the *Today* programme is the flagship for BBC News and Current Affairs, the standards required of it are high and that therefore it has to be as accurate as possible and this should inform any judgment about "due accuracy".

He said specifically that:

"Where Syrians were murdered trying to get to their homes in Syrian territory occupied by Israel, it can hardly be considered irrelevant that that territory is Syrian and is occupied by Israel. Due accuracy in this area would surely require audiences not being misled into believing that the Israeli forces were defending their homes or their legally owned territory."

The complainant said that, although the ECU had said this inaccuracy was brief, actually it had occurred several times over a couple of minutes. This was not an accidental oversight, he alleged, it was the entire thrust of the presenter's questioning.

The complainant argued that, if a broadcaster referred to someone crossing the UK border, an audience would take that as suggesting that the territory crossed into was the UK as opposed to territory occupied by the UK.

A devil's advocate approach would require putting the Syrian or Palestinian position to the Israeli spokesman but when the Israeli spokesman used the words "break into Israel" and "Syrian Israeli border", the presenter did not respond by presenting the perspective that the territory is not Israel and it is not the Syrian Israeli Border.

The complainant said that the inaccuracy was particularly relevant as the interviewer had brought the status of the land and the boundaries into the discussion and therefore he should have done so accurately.

3. Applicable Editorial Guidelines

The following Editorial Guidelines are relevant to this case. The full guidelines are at: www.bbc.co.uk/editorialguidelines.

Editorial Values

We seek to establish the truth of what has happened and are committed to achieving due accuracy in all our output. Accuracy is not simply a matter of getting facts right; when necessary, we will weigh relevant facts and information to get at the truth. Our output, as appropriate to its subject and nature, will be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We will strive to be honest and open about what we don't know and avoid unfounded speculation.

Section 3 - Accuracy

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.

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 comments from the complainant.

The Committee noted that this appeal raised concerns about whether the BBC had achieved due accuracy in a way that is adequate and appropriate to the output taking into account:

- the subject and nature of the content
- the likely audience expectation
- any signposting that may influence that expectation.

Context

The Committee noted that the particularly relevant parts of the item were the following script lines and interview extracts with Husam Zomlot (the Deputy Commissioner of the Fatah International Affairs Commission) and with Mark Regev (the Israeli Government spokesman) which directly referred to borders or disputed territory and have therefore been included here:

John Humphrys: There is great anger amongst Palestinians in the Middle East this morning over how Israel reacted when Palestinian demonstrators massed on their borders yesterday. 12 were shot dead, many more were injured. The demonstrations were timed to mark the 63rd anniversary of the creation of the State of Israel. I'm joined from Israel by Mark Regev the spokesman for the Israeli Government, and from Ramallah by a leading Palestinian, Dr Husam Zomlot, who is the Deputy Commissioner on Fatah's international affairs. Dr Zomlot, I said massed on their borders but in fact in some

cases actually crossed over the borders into Israel so it's not surprising that Israel reacted the way it did is it?

Husam Zomlot: Well let me say that the marching towards the borders was not to mark Israel's independence but to mark the Nakba which means literally catastrophe. For all those people who marched 63 years ago, it was a catastrophe when half of the Palestinian people, half of the Palestinian nation, were forced to leave their homes, their farms, and they have become refugees now. Millions of them are scattered all over the region and inside what remains of the occupied Palestinian territories. For them, they have given a peace process more than 20 years. They have been waiting on the margins, and having seen all crumbling and failing, they have taken matters to their hands and, I am very proud and glad, peacefully marching only really to draw attention to their 63 year plight.

JH: But they did not march peacefully, that's my point. Some did, of course, but many did not.

HZ: None of them, according to what we have all seen, none of them is armed, absolutely not.

JH: They were carrying clubs, they were throwing stones, they posed a threat to the Israelis.

HZ: Those are the definition of peaceful demonstrations, as opposed to the Israeli tanks and helicopters and F16s, you cannot even start to compare the violence.

JH: So how should Israel have reacted you march up to and in some cases across their borders with clubs and with stones how would you have expected the Israeli security forces to react?

HZ: This is not a security matter. Definitely the security forces would always failed to deal with such a purely political, humanitarian, legal matter.

JH: Well forgive me sorry to interrupt you but you say it's not a security matter, if I marched into your house waving a club, throwing a stone [HZ: I beg...] then it would be a security matter wouldn't it?

HZ: I beg your pardon according to the United Nations according to UN security council resolutions those people they are marching to their homes they have the deeds of their homes it's their private property so let's set the record right once and for all these people are not marching into a foreign territory. For the last so many years we have been trying and attempting at only brushing their very genuine

grievances under the carpet it doesn't work [JH: alright] it just doesn't work...

JH: Thank you for that. Let me turn to Mark Regev of the Israeli government. Even if there were many of them who were indeed waving clubs and throwing stones as you have said, as your government has said Mr Regev, did that justify tanks and live rounds being fired at them?

Mark Regev: According to what everyone is reporting this morning there were tens of thousands of people on the border with Lebanon trying to break into Israel. There were thousands on the border with Syria trying to break into Israel. Hundreds managing to cross the border I'd remind you and the listeners... The Syrian-Israeli border, the Lebanese-Israeli border, you know there's a formal state of war these are very tense, tense parts of the globe. These are places where there've been conflict in the past. You can't have a situation where hundreds or thousands of people are trying to violently break through the border it's just...

JH: But you can have a situation where armed soldiers and tanks fire on unarmed – albeit they had some clubs, they had, they were throwing stones but nonetheless they had no guns – on unarmed civilians. You can have that.

MR: I think if you consider the fact that there were thousands and hundreds of people trying to force their way through the border through what is ultimately a very tense security zone, our forces behave with great restraint and I would remind you...

JH: 12 people dead, shot dead.

MR: But you have I would remind you that your own British press has reported this morning that it's not clear that all those casualties were caused by Israelis. There were Lebanese forces firing round lives as well and so forth but you have to address the central question, what were these people demonstrating about? It was not about borders or settlements or one of the issues in conflict between us and the Palestinians. These Nakba demonstrations are against what they call the catastrophe [JH: Yes we've just heard what Dr Zomlot said] the establishment of the state of Israel...

JH: Exactly. They believe that their homes were stolen by Israelis that is what they believe and they were demonstrating in pursuit of that belief.

The Committee noted that the Golan Heights were occupied in 1967 and annexed by Israel in 1981, and this has not been recognised in international law.

The Committee noted that demonstrators in Syria stormed or bypassed the fence marking the ceasefire line and entered the Golan Heights. Some reached Majdal Shams – a Druze Arab village within the Golan Heights, close to the original Israeli border before the Golan Heights was occupied. The Committee noted that Israelis would describe Majdal Shams as an Israeli village but to the demonstrators it is Syrian. The Committee noted that neither Majdal Shams nor the Golan Heights were mentioned by name in the item.

The Committee noted the complainant said that he was not concerned with the word “borders”. The complainant said he was concerned that the interview did not make clear that the specific clashes in which people were killed were in the Israeli occupied and annexed Golan Heights, rather than at any other of Israel’s boundaries. (The Committee noted that, in fact, deaths were also reported in Lebanon.)

The Committee noted that the ECU, in both its responses to the complainant, acknowledged that the complainant was strictly correct. The ECU Complaints Director noted that:

“...in the context of this story it was the actions of the majority of the protestors in the areas in breaching the ceasefire line and reaching Majdal Shams that is at issue. As you correctly note, the Golan Heights is recognised internationally as Syrian territory which is controlled by Israel. The references to protestors having crossed borders into Israel were therefore inaccurate.”

The Committee noted, however, that the Complaints Director did not uphold the complaint, stating that the interview was not about the status of land occupied by Israel but about the Israeli response to the actions of the demonstrators.

The Committee noted that the complainant said there was a difference and that this should have been pointed out. The Committee noted that the complainant cited two phrases that the presenter had used:

“I said massed on their borders but in fact in some cases actually crossed over the borders into Israel so it’s not surprising that Israel reacted the way it did is it?...”

and

“So how should Israel have reacted you march up to and in some cases across their borders with clubs and with stones how would you have expected the Israeli security forces to react?”

The Committee noted that the complainant had said these were inaccurate because the killing of the protestors (some of which happened in and around the village of Majdal Shams) occurred on occupied and annexed land and, therefore, not in Israel.

The Committee noted that the independent editorial advisor had looked at a range of other sources which reported the same events and that, while some explained that this is annexed land that was conquered in 1967, some did not set out the specific status of the Golan Heights as compared to other disputed areas.

The Committee noted that the Israeli paper *Ha’aretz* stated:

Calm returns to Israel-Syria border after day of deadly violence

Calm returned to Israel's border with Syria on Sunday night, after a day of demonstrations reportedly left up to 20 Syrian protesters dead.

State run Syria TV reported 20 people killed and 325 wounded by Israel Defense Forces fire along the border in the Golan Heights, in an attempt to prevent border infiltration and break up Nakba Day rallies commemorating 44 years since the Six-Day War. Israel captured Syria's Golan Heights in that conflict, as well as the West Bank and the Gaza Strip...

The *Guardian* stated:

Israeli troops clash on Syrian border with protesters marking six-day war

Dozens injured as an estimated 1,000 Syrians and Palestinians gathered at border village of Majd al-Shams. Demonstrators gather along the Syrian border before trying to cut through the barbed wire and enter the Israeli-annexed Golan Heights. Israeli troops have clashed with protesters on the Syrian border for the second time in less than a month, with several dozen reported injured and claims that up to 20 had been killed.

The Committee noted the *Daily Mail* reported the incident as follows:

16 dead, dozens injured as violence erupts along Israel's borders with Syria

16 May 2011

Israeli troops today clashed with Arab protesters along three hostile borders, including the frontier with Syria, leaving 16 people dead and dozens more wounded in an unprecedented wave of demonstrations marking a Palestinian day of mourning for their defeat at Israel's hands in 1948.

Along Israel's border with Syria, thousands of protesters stormed the fence and hundreds burst through, pelting soldiers with stones, the military said. Soldiers guarding the border opened fire to stop them. Dozens were wounded and four were reported killed.

and Associated Press on the same incident:

Palestinian Border Protests: The Arab Spring Model for Confronting Israel

By [Karl Vick](#) Monday, May 16, 2011

Demonstrators use a makeshift stretcher to carry the body of a man who was killed as protesters from Syria tried to approach the village of Majdal Shams, in the Golan Heights between Syria and Israel, on May 15, 2011

After more than 100 Palestinians breached Israel's border with Syria on Sunday, May 15, knocking down a fence and striding into a village in the Golan Heights, overmatched Israeli security forces scrambled to glean what they could from the protesters who had just, without so much as a sidearm, penetrated farther into the country than any army in a generation.

Finally, the Committee noted the British Foreign Office gave the following advice to citizens:

15 May is 'Nakba Day'. We advise those travelling to the Israeli border area with Syria to be extra vigilant during this time. You should avoid any political gatherings and/or demonstrations."

The Committee noted that at earlier stages of this complaint, the BBC essentially considered whether the word "border" was the correct terminology, and that the complainant said that was the wrong test as his complaint referred specifically to the status of the Golan as occupied and annexed territory.

The Committee noted a succinct description of the status of the Golan Heights in the Encyclopædia Britannica:

"On the last two days (June 9–10, 1967) of the Six-Day War, the Israeli armed forces, after defeating Egypt and Jordan, turned their attention to Syria. Under cover of the Israel Air Force, engineer troops built access roads up the steep Golan Heights, which were then frontally assaulted by armoured vehicles and infantry. The Syrian defenders and most of the Arab inhabitants fled, and Syria asked for an armistice; fighting ceased on June 10. The heights were placed under Israeli military administration, and Golan was integrated into the communications and financial framework of Israel. By the late 1970s nearly 30 Jewish settlements had been established on the heights, and in 1981 Israel unilaterally annexed the area."

The Committee noted that the annexation means that the population, which is largely Druze Syrian and not Palestinian, have been able to become Israeli citizens if they so wish, although very few have done so.

The Committee noted that the independent editorial adviser had enquired of the *Today* programme whether the status of the village and villagers in an annexed, not internationally recognised, part of Israel should have informed the presenter's line of questioning when referring to the occupied Golan Heights.

The Committee noted that the Assistant Editor did not think the point made a difference to the programme's initial response to this complaint:

"The reason we have acknowledged that 'boundary' might technically have been a better word than 'border' is because the latter usually denotes an internationally recognised division between land controlled by different governments, whereas the former is a more practical description of a line which whilst not necessarily recognised by the international community, is nevertheless a reality on the ground. It logically follows therefore that the land [the complainant] is talking about is at the very least disputed and most likely occupied by one side or the other..."

The Committee noted the Assistant Editor had said:

"...This was an item about an actual confrontation based on existing divisions and John's [Humphrys] questions challenged both sides on their behaviour that day. It was also more than a debate about one village; it was about dispute on the Syrian/Israeli and the Lebanese/Israeli border. I can't say for certain but I doubt

we would have been aware of the specific circumstances of Majdal Shams. However the Middle East has a long and complex history and inevitably we can't go into much detail in the course of a single interview. What John [Humphrys] did try to draw out was what sense of responsibility either side took for the violence which occurred basing his arguments on the reality of the position on the ground, rather than detailed historical background.

It's also important to note I think that the Palestinian representative explicitly talked about why the demonstrators were there (they believed their homes and land had been stolen from them by the Israelis) and the Israeli spokesman did counter that with a more historically based argument. Listeners did get a sense of the broader context and I don't believe therefore that they would have been misled."

The Committee noted that Dr Zomlot had said:

"...according to the United Nations according to UN security council resolutions those people they are marching to their homes they have the deeds of their homes it's their private property so let's set the record right once and for all these people are not marching into a foreign territory..."

However, the Committee noted that neither of the interviewees at the time raised the status of the Golan in their responses and that most of the discussion was couched in quite general terms, not differentiating between the different statuses of the various areas mentioned.

The Committee considered whether it was an omission, amounting to a breach of the editorial guidelines on Accuracy, for the programme not to have made clear the particular status of the Golan Heights.

Committee members were aware that the ECU had acknowledged that the words used had been inaccurate, but it had concluded that this did not amount to a breach of the Guidelines requiring "due accuracy". The Committee accepted these were fine judgements but considered that the obligation on a leading news and current affairs programme, such as *Today* in particular, as well as on the BBC in general, was to lead audiences to understand the complexities and nuances of the situation in the Middle East.

The Committee noted the scripted introduction to the interview:

"There is great anger amongst Palestinians in the Middle East this morning over how Israel reacted when Palestinian demonstrators massed on their borders yesterday. 12 were shot dead, many more were injured. The demonstrations were timed to mark the 63rd anniversary of the creation of the State of Israel. I'm joined from Israel by Mark Regev the spokesman for the Israeli Government, and from Ramallah by a leading Palestinian, Dr Husam Zomlot, who is the Deputy Commissioner on Fatah's international affairs. Dr Zomlot, I said massed on their borders but in fact in some cases actually crossed over the borders into Israel so it's not surprising that Israel reacted the way it did is it?"

The Committee concluded that a member of the audience listening to the scripted introduction and to the interview would conclude that protestors had crossed into Israeli territory. The Committee agreed that this was not duly accurate. The Committee

considered that the programme-makers could not conclude that the audience would necessarily understand the distinctions of the boundaries between Israel and its neighbours in the context of this particular protest and that the BBC had a duty to try and make such details clear, especially when dealing with an area inspiring such sensitivity as the relationship between Israel and its neighbours.

The Committee noted that the *Today* programme often contained items on the Middle East and that it had a good record of being duly accurate and impartial on the many contentious issues involved. The Committee acknowledged that the item was a live interview, and the pressure of a live interview raised particular challenges, but that due accuracy was just as important as with a pre-scripted piece although sometimes more difficult to achieve. The Committee accepted that the presenter was trying to elicit answers from both interviewees as to the use of force by the protestors and by the Israeli security forces, and so the questioning was rightly probing. However, the Committee did not accept that a "devil's advocate" approach (had that been intended) was a reason for the lack of clarity over the status of the Golan Heights, which could have been clarified during the interview or in the scripted introduction.

The Committee concluded that the interview breached the Accuracy guidelines on "clear, precise language" in that it implied that the Occupied Golan Heights were part of Israel. The Committee was satisfied, however, that this breach of the Guidelines was inadvertent and was not knowingly misleading. The Committee did not consider that this breach of the Accuracy guidelines raised any issues in relation to impartiality.

Finding: 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.

Lost: The Mystery of Flight 447, BBC Two, 30 May 2010

The complainant asked the Editorial Standards Committee to review the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust appealing against the decision of the Complaints Manager, BBC Vision, that he was unable to consider the complaint because it was outside the time limit stipulated in the complaints framework. The complainant argued that there was no point in him pursuing his complaint until the cockpit voice recorder and flight data recorder had been retrieved and analysed. He said that accident investigation usually took a considerable period of time, quite often years, to produce a final report and that the 20 day window to respond to a Stage 1 rejection in those circumstances was inadequate. The complainant also said that at no point in the BBC's reply at Stage 1 had he been informed of the BBC's complaints procedure or the time constraint that it contained.

In reply, the Trust's Senior Editorial Strategy Adviser explained that she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser noted that the complainant first wrote to the BBC on 8 June 2010 criticising the programme's research and saying that it relied too heavily on information released by the French Air Crash Investigation Agency (BEA). She noted that he cited a report by a German journalist, Gerald Traufetter, suggesting an alternative theory to that presented in the programme. In the complainant's view, this report contained information which the programme should not have ignored.

The Senior Editorial Strategy Adviser noted the response from the programme's Executive Producer, sent on 18 June 2010, which said that:

- the programme makers were aware of Mr Traufetter's theories while the documentary was in production and many of the points he raised were dealt with at length in the programme
- the investigation team assembled by the programme had worked on some of the most complex air crash investigations of recent years and, as professional investigators, could only rely on the established facts about Flight 447 which were contained in the two BEA interim reports
- Mr Traufetter's main assertion – that the pilots risked their passengers' lives and their own by deliberately flying into a thunderstorm to save fuel – was

discounted as implausible by the two highly experienced pilots in the programme's investigation team

- the documentary's investigation team came up with a more plausible theory based on detailed satellite weather images of the area on the night of the accident, which suggested that a much smaller storm obscured the view of the aircraft's weather radar, thus preventing it from picking up a larger storm that lay behind it
- the programme's investigators suggested super cooled water was responsible for freezing the Pitot Probes which measure air speed, causing the auto pilot to cancel
- once in manual flight mode the pilots may have failed to notice the position of their engine thrust levers because of the design of that particular cockpit
- industry over-reliance on flight simulators with limited manoeuvrability may be leaving modern pilots ill-equipped to deal with "loss of control" incidents such as the stall which Flight 447 was thought to have experienced
- the programme concluded by stating that "we will never know conclusively what happened to Flight 447 until the black boxes are recovered".

The Senior Editorial Strategy Adviser noted that the complainant wrote to the Controller of BBC Two on 14 August 2012 to say that the final report on the crash of Flight 447 had been released by the BEA on 27 July 2012. The complainant requested that the BBC apologise for the contents of the programme, and he made the following points:

- Mr Traufetter clearly had inside information given the detail he had of the plane's flight path
- contrary to the letter from the Executive Producer, Mr Traufetter did not assert that the pilots risked the lives of their passengers by deliberately flying into a thunderstorm
- the programme did not fully address the issue of Pitot Probes
- if the programme's investigation team thought the flight data and cockpit voice recorder would be recovered, they would probably have been much more careful about what they said on the programme
- the final BEA report gave flight crew error as the cause of five of the six events which BEA said had resulted in the accident
- the final report rejected any suggestion that the plane was brought down by the weather conditions at the time of the accident, as the *Lost* investigation team had suggested.

The Senior Editorial Strategy Adviser noted that the complainant's letter of 14 August 2012 was in response to the letter received more than two years previously from the Executive Producer. Given the time that had elapsed, it would be very difficult for the programme makers to respond properly to the complainant's new points. She concluded that it was reasonable, therefore, that the Complaints Management of BBC Vision declined to consider the complaint. However, the Senior Editorial Strategy Adviser accepted that at

no stage prior to contacting the BBC in August 2012 was the complainant made aware of the time constraint within the complaints procedure. The Senior Editorial Strategy Adviser concluded that it was reasonable, therefore, for the Trust to discount the time limit and consider the appeal request solely in relation to the editorial issues which the complainant had raised.

The Senior Editorial Strategy Adviser noted that the complainant's letter of 14 August 2012 made some points which could have been raised at the time of the original broadcast in 2010 and some which had arisen as a result of the new information that had come to light. The new points, which related to information contained in the final BEA report, were that flight crew error was a major reason for the crash and that weather conditions were not to blame. The Senior Editorial Strategy Adviser accepted that these points could not have been made had the complainant replied to the Stage 1 response within 20 days because they relied on analysis of information from the flight data recorder and cockpit voice recorder, neither of which had been recovered at the time the programme went to air.

The Senior Editorial Strategy Adviser said, however, that programme makers could only take into account information that was available to them at the time of broadcast, and of which they could reasonably be expected to be aware. She concluded that neither condition applied to the flight data material. She said that at the time of broadcast nobody could possibly have known what the flight data would reveal or that it would ever be recovered. The Senior Editorial Strategy Adviser concluded that hindsight could not be applied in these circumstances and therefore there would be no grounds for testing the content that was broadcast against these final BEA conclusions.

The Senior Editorial Strategy Adviser did not believe, therefore, that this element of the appeal would have a reasonable prospect of success and she did not propose to put it before the Editorial Standards Committee.

The Senior Editorial Strategy Adviser noted that the complainant's letter of 14 August 2012 made two additional points: asserting the reliability of Mr Traufetter's theories, contrary to the conclusion of the Stage 1 response; and criticising the programme's handling of the section on Pitot Probes.

On the first of these, the Senior Editorial Strategy Adviser said that the selection of information for inclusion in broadcast content was a legitimate matter of editorial judgement and not a Guideline issue, unless by omitting a particular perspective there was a risk of breaching the requirement for impartiality.

One area where Mr Traufetter's opinions were not shared by the experts consulted by the programme related to the route taken by the aircraft and whether it was influenced by the amount of fuel the aircraft was carrying. The complainant stated that, contrary to the letter from the Executive Producer, in no part of Gerald Traufetter's report did he assert "that the pilots of Flight 447 risked the lives of passengers by deliberately flying into a thunderstorm to save fuel". The Senior Editorial Strategy Adviser agreed that this was not a form of words used in Mr Traufetter's article. However, an English translation of the article included this relevant section:

"On the night of the tragedy, other planes diverted their flight paths and took a detour around the danger zone.

“Why then did flight AF 447 head straight into the deadly storm system? Is it possible that the tragedy began even before the plane took off?”

“Galeão Airport, Rio de Janeiro, 6pm local time: Preparation for takeoff Captain Marc Dubois, 58, goes through the flight plan of AF 447: He enters a starting weight of 232.757 tons into the on-board computer, 243 kilograms less than the maximum permissible weight for the A330. As well as the passengers’ luggage, the ground crews load 10 tons of freight into the cargo bay. Dubois has more than 70 tons of kerosene pumped into the fuel tanks. That sounds a lot more than it actually is, because the plane consumes up to 100 kilograms of kerosene every minute. The fuel reserves don’t give much leeway.

“It’s only by means of a trick that the captain can even reach Paris without going under the legally required minimum reserves of kerosene that must still be in the plane’s tanks upon arrival in the French capital. A loophole allows him to enter Bordeaux - which lies several hundred kilometres closer than Paris – as the fictitious destination for his fuel calculations.”

The Senior Editorial Strategy Adviser argued that it was clear from this that Mr Traufetter believed that the pilots were under pressure because the amount of fuel limited the flight options open to them. He linked that to the pilots’ failure to divert around the storm in the way that other aircraft had done. The programme makers were making reasonable editorial judgments about which of the theories put forward by Mr Traufetter were valid and which were not. There was no obligation on the programme makers to include all of Mr Traufetter’s points. She saw no evidence to suggest that, by omitting some of Mr Traufetter’s theories, the programme risked being in breach of the impartiality requirement.

The Senior Editorial Strategy Adviser explained that the Editorial Guidelines also require programme makers to ensure that output is duly accurate. The Senior Editorial Strategy Adviser did not consider that the issue here was whether Mr Traufetter’s theories were more valid than those put forward by the programme’s investigation team. Nor was it reasonable to judge one set of theories as more reliable than the other on the basis of what had turned out to be the verifiable circumstances of the crash. (Although on many key facts the programme turned out to be correct, as did Mr Traufetter.)

Looking at the way the programme makers treated the information in the programme, the Senior Editorial Strategy Adviser noted the advice which the programme makers sought. She considered that the programme assembled a suitably qualified team and clearly stated their qualifications. In terms of being clear about what was and what was not known, there were several occasions when the programme stated that it was presenting tentative interim theories, not proven facts. Early in the programme the narrator said: “The missing flight data in cockpit voice recorders would provide the only definitive proof of the aircraft’s fate.” The former accident investigator, Tony Cable, also said that the units’ absence was: “A very, very big handicap to the investigation.”

The Senior Editorial Strategy Adviser also noted:

- the tentative manner in which the programme framed its conclusions, stating: “From the existing limited evidence our independent team has linked together the possible chain of events...”

- the programme's acknowledgement of the status of the official investigation and by implication the limits of its own investigation: "The official French investigation is not prepared to make its final report until the black boxes are found ... Two interim reports set out a tantalising array of known facts but are unwilling to draw specific conclusions"
- the explicit acknowledgement of the status of the theories from the closing seconds of the programme: "It's a compelling theory based firmly on the available evidence. But until the black boxes and their vital data are recovered there can be no definitive proof."

In relation to the programme's theory that a hidden storm pattern meant the plane flew into the thunderstorm by mistake, which the complainant said was proven to be wrong by the final BEA report, the Senior Editorial Strategy Adviser noted the care taken by the programme to frame the conclusion and to attribute it: "If Williams is right, Flight 447's radar was blocked by the smaller storm in their path... Supporting Williams' theory another flight crew that night reported that they only saw the danger when they increased radar sensitivity."

For these reasons the Senior Editorial Strategy Adviser considered that the programme makers took care to make sure they complied with the accuracy guidelines. She did not consider that this element of the appeal (i.e. relating to the reliability of Mr Traufetter's theories) had a reasonable prospect of success and she did not propose to proceed with it to the Editorial Standards Committee.

Turning to the complainant's second additional point (that the programme did not adequately address the Pitot Probes issue), the Senior Editorial Strategy Adviser noted that the Pitot Probes formed a significant section of the programme. The programme went into detail about why they might have failed and noted that there had been 26 failures since 2003. It reported that, although safety standards had not been contravened, Air France was in the process of upgrading its fleet. The Senior Editorial Strategy Adviser said that she had not seen any evidence to challenge the thoroughness of the programme's approach to the Pitot Probes issue. Much of what the programme's investigation team came up with accorded with the conclusions in the final BEA report. The programme makers took care to state that their team's findings were theories based on an analysis of the evidence with the benefit of their experience, but were not proven fact. Several times they asserted that definitive proof would only be available when the black boxes were located.

The Senior Editorial Strategy Adviser did not consider, therefore, that this element of the appeal would have a reasonable prospect of success if it were to proceed to the Editorial Standards Committee.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He maintained that various statements in the programme deflecting criticism from the flight crew were inaccurate. The final BEA report did not support the theory put forward in the programme that the weather was to blame for the accident. The programme was not based on established facts but rather on speculation. At the very least, the programme should have explored more likely causes, especially pilot error. The report by Mr Traufetter was far more accurate than the programme, both at the time of transmission and following the BEA's final report. By no stretch of the imagination did the programme present a compelling theory based on available evidence. The programme breached the Editorial Guidelines, in the complainant's view.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision.

The Committee noted that the programme had been careful to make clear that the theories it presented were speculative and based on incomplete information. The Committee noted that since the discovery of the missing records the BEA had issued its final report and, while much of what the programme had included remained valid, in some areas the theories put forward in the programme were contradicted. The Committee concluded, however, that it would not be appropriate to judge the programme on information which had become available only later. The Committee agreed, taking into account the points made by the complainant and the responses from the BBC, as well as the comments of the Senior Editorial Strategy Adviser, that the programme makers had exercised their editorial judgment appropriately. The Committee agreed that, given the circumstances at the time the programme was made, there was no reasonable prospect of success for an appeal on the grounds that the Editorial Guidelines, specifically those on Accuracy, had been breached. Notwithstanding this, the Committee wished to alert the BBC Executive to the fact that the newly available information should be taken into account for any proposed repeat of the programme.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.

Graham Norton Trail, BBC Radio 2, 30 June 2012

The complainant asked the Editorial Standards Committee to review the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust appealing against the Editorial Complaints Unit's decision not to uphold his complaint that a reference in a trail for the Graham Norton show to patients undergoing an MRI scan was inappropriate and offensive. The complainant said that for the content to have been broadcast originally was bad enough. He said that for it to then be used in trails the following week was unacceptable, wholly inappropriate and offensive. The complainant sought assurance that he would not hear such humour again.

In reply, the Trust's Senior Editorial Strategy Adviser explained that she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser considered the appeal request in relation to the Editorial Guidelines on Harm and Offence. These Guidelines require programme makers to use their judgment and to take into account the expectations of the likely audience and the context in which any potentially offensive comment is made. The Senior Editorial Strategy Adviser explained that this does not mean that any content is acceptable, but that the expectation of the audience is an important factor when considering matters relating to offence.

The Senior Editorial Strategy Adviser noted that the trail began by referring to people who had contacted the show to say they were fans of it, even though they were unable to hear it due to a power-cut. Graham Norton remarked, "We should have more listeners that don't listen. I think they'd enjoy the show more". The trail's starting point was, therefore, an unusual one – referring to listeners who were unable to listen. The Senior Editorial Strategy Adviser noted that the trail then turned to listeners who were given no option but to listen.

"...[a listener] writes, 'Can we get a mention on your show? We are currently working in our local NHS hospital MRI department.' They pipe this show into the room for the patients. Can you imagine? You're stuck in an MRI machine, this is going on; don't open your eyes, the roof of that machine is much closer to your face than you think."

The Senior Editorial Strategy Adviser said that this trail was intended to reinforce the idea that this was a programme which welcomed listeners' contacts and wanted to reflect their experiences.

The Senior Editorial Strategy Adviser noted that the Editorial Complaints Unit had pointed out that the Guidelines do not require that the BBC never offends, or that material which some may find objectionable is not aired. Given that taste in such matters was inevitably subjective, that would be impossible to achieve. The Senior Editorial Strategy Adviser also noted the ECU's argument that Radio 2 audiences would be likely to be familiar with Mr Norton's style and his often edgy humour, and would not therefore have been surprised

by the content of the trail. The Senior Editorial Strategy Adviser considered that this was a reasonable response. She agreed with the ECU that Mr Norton's comment was in line with listeners' expectations and was intended to be light-hearted. The trail was neither an attack on people in MRI machines nor an attempt to make light of their experiences. The joke appeared to be aimed at the MRI department's choice of listening material when patients came in for their scans. While some patients might feel increased anxiety as a result of hearing the trail, as the complainant suggested, it might also be the case that Mr Norton's light-hearted comment could lessen the stress.

The Senior Editorial Strategy Adviser referred to research into taste and standards in broadcasting. When looking at comedy, the research report concluded:

- Comedy is arguably the most complex genre for the audience in this area of taste and standards. It is an extremely wide-ranging genre and opinions are often very subjective. Individual taste may permit or sanction what others may feel is in poor taste. For the majority, comedy overall comes with its own licence and even more specifically, each style of comedy/comedian has their 'own' licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience.
- Audiences draw a distinction between a more derisive, potentially bullying tone and mockery, and as with the comedy genre, taste makes judgement quite subjective. How a line is delivered, and by whom, are crucial factors which define content as acceptable or unacceptable.
- The absence of very strong language (the f-word) and lack of aggression are key discriminators, as is the personality of different presenters.

The Senior Editorial Strategy Adviser concluded that, given the audience expectations for Graham Norton's programme, the tone and content of the trail and the research which gave comedians and presenters a good deal of individual licence, the appeal did not have a reasonable prospect of success and she did not therefore propose to put it before the Editorial Standards Committee.

The complainant requested that the Committee review the decision not to proceed with the appeal. The complainant alleged that he was lied to in the Stage 1 response from the BBC when they said that Mr Norton's comment was not aimed at people who were having an MRI scan, and he said he wanted an explanation of this regardless of what the BBC Trust decided. He said he wished to appeal because someone needed to be accountable for deliberately misleading him about what or who was being addressed in the trail.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the programme trail in question.

The Committee noted that the complainant had raised the issue of what he had been told in the Stage 1 response to the complaint. The Committee noted that this specific issue was a matter of concern to the complainant; however, it was mindful that the question it had to address was whether there was a reasonable prospect of success for the appeal

against the Stage 2 response to the complaint. Nevertheless, the Committee, having heard the clip in question, accepted that Mr Norton had directly addressed a hypothetical listener who might have been listening from within an MRI machine when he said:

“...don’t open your eyes, the roof of that machine is much closer to your face than you think.”

The Committee did not, however, consider that this distinction was material to the question of whether the trail had been appropriate within the Editorial Guidelines. The Committee noted that the Stage 2 reply from the ECU did not make this distinction.

The Committee, having heard the trail, was satisfied that no offence was intended by this light-hearted comment. The Committee did not wish to downplay the genuine fears which people experiencing an MRI scan may face. However, the Committee did not agree that it was inevitable that somebody undergoing, or about to undergo, an MRI scan would react to the joke in the same way that the complainant had done. Taking into account the relevant factors, such as audience expectation, the Committee was satisfied that the risk of this joke causing harm or offence to its intended audience was low. For this reason the Committee agreed that there was no reasonable prospect of success for an appeal on the grounds that the trail had breached the Editorial Guidelines.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.

Panorama: Stadiums of Hate, BBC One, 28 May 2012

The complainant asked the Editorial Standards Committee to review the decision of the Head of Editorial Standards that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust appealing against the decision of the Head of Editorial Compliance & Accountability, BBC News, not to uphold his complaint about the above programme which examined the problem of racism and violence at football matches in Poland and Ukraine, ahead of the Euro 2012 championship. The complainant alleged that the programme was offensive, biased and inaccurate. He referred to a statement by Jonathan Ornstein, who had been interviewed by *Panorama* and who now felt he had been exploited by the programme for its own sensationalist agenda. The complainant also made various comments on the Stage 2 response from the BBC including:

- There had not been one incident of racist behaviour of the type *Panorama* alleged was endemic in the host countries at any of the Euro 2012 matches. This showed that *Panorama* was completely wrong.
- The timing of the broadcast suggested that *Panorama* was just interested in making headlines.
- An individual, who took part in the programme, was not qualified to comment on countries he had never visited. If the individual had been better informed, he would have known that Poland prided itself on tolerance.
- Some of the evidence quoted by the BBC to support its allegations was from years ago.
- *Panorama* had previously been accused of staging footage, for example in the Primark case.
- It was incorrect to suggest that there was no official condemnation of racism in Poland and Ukraine. Legislation in Poland was tougher than in the UK, for example.
- *Panorama* grossly exaggerated the problem in Poland and Ukraine which was no worse than in the UK.

The complainant wrote again, stating that:

- The UEFA President and BBC Sport's chief football writer had praised Poland and Ukraine for Euro 2012 which, despite fears beforehand, had turned out very successful.
- The Polish FA had said that they did not know whether they had refused to speak to *Panorama*, as the BBC had suggested. It was possible they had simply been too busy to arrange a meeting.

- A BBC Three programme had confirmed that the rivalry between fans in Poland and insults exchanged were based on club legacies, and that there had been no instances of racist or homophobic attacks on visitors to Poland.
- *Newsweek Poland* had completed a separate investigation and the complainant attached a translation.
- The programme could constitute racism against Polish people.

The complainant also provided information from an Assistant Chief Constable about his experience of policing Euro 2012. The Assistant Chief Constable said that he did not witness any racist incidents.

In reply, the Trust's Head of Editorial Standards explained that the correspondence had been reviewed by the Trust Unit. As a result, she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Head of Editorial Standards agreed that the complaint engaged the Editorial Guidelines on Offence, Accuracy and Impartiality. However, she believed that the BBC Executive had addressed the complainant's concerns fully and persuasively. His comments on the Stage 2 response and in subsequent emails largely reinforced points which he had made previously and did not overturn the points made by the Executive in her view.

The Head of Editorial Standards said that the complainant's central complaint was that the programme gave the impression that racism and anti-Semitism were endemic in Poland and Ukraine, and to a much greater extent than elsewhere. However, she could see no evidence to support this aspect of the complaint. The programme was clearly about the unacceptable behaviour of some football fans and it explicitly acknowledged that this problem was not unique to Poland and Ukraine. She realised that the complainant believed the problem was exaggerated by *Panorama*. However, there was substantial, recent evidence – quoted in the Stage 2 response and gathered by *Panorama* itself – to support the programme's central theme.

The Head of Editorial Standards said that the fact that Euro 2012 passed off virtually without incident was, of course, extremely welcome. However, that did not mean *Panorama* was wrong to make the programme that it had.

The Head of Editorial Standards noted that the complainant had raised issues with specific aspects of the programme, such as the choice of one particular individual as an interviewee and the decision not to interview other players who might have given a more positive perspective. Again, the Head of Editorial Standards believed that these complaints had been addressed adequately by the Executive. She explained that decisions about whom to interview were part of the direction of editorial output which the BBC Charter and Agreement made it clear was a matter for the Executive rather than the Trust. She explained that the Trust would only become involved if there was evidence that the Editorial Guidelines had been breached, and the Head of Editorial Standards did not believe that this had occurred in this case.

The Head of Editorial Standards noted that the complainant had also suggested that certain footage, such as that showing racist graffiti and a violent attack on Asian students, may not have been genuine and he had provided a *Newsweek Poland* article which he

said was further evidence against the programme. The Head of Editorial Standards noted that the Executive had emphatically denied claims of fakery or selective editing by the programme, and she said that the complainant had not provided evidence which supported such claims. The Head of Editorial Standards said there was also no evidence to support his allegation of BBC racism against Polish people.

For these reasons, the Head of Editorial Standards did not believe that the appeal had a reasonable prospect of success and she did not propose to proceed with it to the ESC.

The complainant requested that the Committee review the decision not to proceed with the appeal. He repeated his allegation that the programme was one-sided and inaccurate, and said that his concerns had not been addressed by the Executive. He provided a list of references which he said contained evidence to support his claims, and he quoted various people in Poland and Ukraine, including senior figures in government, who he said had criticised the programme. His other points included:

- In 2008 an MP had raised the question of institutional BBC anti-Polish bias.
- It was hypocritical and xenophobic of the BBC to warn of the dangers of travelling to Poland and Ukraine when the previous year London and other UK cities were experiencing riots.
- The Trust had upheld previous complaints against *Panorama*.
- *Panorama* had edited interviews selectively for the *Stadiums of Hate* programme, leaving out positive comments, in breach of editorial standards.
- The BBC's claim that the Polish police and authorities had not responded to requests for interviews was untrue.
- The police had provided *Panorama* with information and statistics which they had not used.
- The evidence of monkey chants at football matches was inconclusive.
- It was disingenuous of the BBC to refer to a European Commission report on racism in Poland when there was also a report on the UK which was twice as long.
- The incidents of racism in Poland referred to in a UEFA report had been exaggerated. The one physical assault mentioned in the report was by a black player on a team mate.
- The programme said nothing positive about Poland or Ukraine.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and the complainant's letter asking the Committee to review her decision.

The Committee noted that the central complaint was that the programme gave the impression that racism and anti-Semitism were endemic in Poland and Ukraine, and to a

much greater extent than elsewhere. The Committee considered that the programme was clearly about the unacceptable behaviour of some football fans, and the programme explicitly acknowledged that this problem was not unique to Poland and Ukraine. The Committee noted that the complainant believed the problem was exaggerated by *Panorama*. However, the Committee was satisfied that there was substantial, recent evidence – quoted in the Stage 2 response and gathered by *Panorama* itself – to support the programme’s central theme.

The Committee noted that the complainant had cited various sources to support his allegations; however, the Committee agreed that it had not seen any compelling evidence which demonstrated that the editorial decisions made by the BBC in the production of the *Panorama: Stadiums of Hate* programme were motivated by racism or bias.

The Committee agreed that there was no reasonable prospect of success for this complaint on appeal.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.

BBC Audience Services' decision not to reply further about: Two "red button" articles on 15 & 17 June 2012: 1. "Alzheimer's" 2. "Bowel disease"

The complainant contacted the BBC concerning two BBC online articles. One was on research into Alzheimer's disease reported in *Genetics* magazine and the other on bowel disease research as reported in *Nature* journal. Both mentioned the use of experiments on laboratory animals which the complainant said should be balanced by statements opposing such research.

Appeal to the Trust

The complainant wrote to the BBC Trust on 13 September 2012 seeking to appeal against BBC Audience Services' decision not to respond further to his complaints about the reporting of animal testing in these two articles. The complainant said:

"Both complaints are not trivial and concern a common unfair theme which the BBC regrettably adheres to: pro-animal exploitation bias, in this case pro-vivisection bias."

The complainant said that as this amounted to bias, it was irrational to dismiss complaints about bias, and that it was even more irrational not to even "consider" the complaints.

Trust Unit decision

The Trust's Senior Editorial Strategy Adviser replied to the complainant. She said that the BBC does have a responsibility to be fair, accurate and impartial across all its output, to provide a right of reply to individuals and groups as and when appropriate and to ensure that no-one or no one group is unfairly represented. These responsibilities are reflected in the BBC's Editorial Guidelines.

She noted that the BBC had explained that the complaints procedure is designed to consider specific complaints where the BBC may have failed in its duty to uphold its publicly stated editorial standards. The Editorial Complaints Procedure specifies that the BBC may not investigate a complaint if it:

Fails to raise an issue of breach of the Editorial Guidelines; or
Is trivial, misconceived, hypothetical, repetitious or otherwise vexatious

The Senior Editorial Strategy Adviser said that, while she understood that these were matters the complainant felt very strongly about, she considered that he was in error in his interpretation of the BBC's Guidelines. She explained that the BBC does not have to provide an alternative viewpoint or signpost to anti-animal testing views every time it covers a scientific matter and this was a misinterpretation of the Impartiality Guidelines.

The Senior Editorial Strategy Adviser noted that the BBC had said in its reply to the complainant:

"The story in question (<http://www.bbc.co.uk/news/health-18432652>) focused on the research carried out and documented in the scientific journal *Nature*. It's not a story about the arguments for or against animal testing; hence no mention was made of the argument against experimenting on animals. When the story is about the debate over testing on animals, the BBC as an impartial broadcaster will report both sides.

The Editorial Guidelines on Impartiality do not say that every view on every side of every subject has to be aired every time a related story is covered. Guideline 4.2.3 makes this clear:

'We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.'

The Senior Editorial Strategy Adviser concluded, therefore, that while the complainant said that the BBC had refused to "consider" his complaints, in fact the complaints had been properly considered against the BBC's Editorial Guidelines.

For completeness, the Senior Editorial Strategy Adviser referred to other appeals that the complainant had made to the BBC Trust and their status or outcome. She emphasised that any complaints which the Trust continued to receive on similar misconceived grounds would continue to receive a decision not to proceed to appeal from the Trust Unit.

The Senior Editorial Strategy Adviser concluded that BBC Audience Services had provided a reasoned and reasonable response to the two complaints and that they were right to cease dealing with these any further.

The Senior Editorial Strategy Adviser further noted that, as the complainant himself acknowledged in his email to the ECU on 14 September 2012, the appeal was out of time. The complainant had provided no reason why these time limits were exceeded.

For these reasons, the Senior Editorial Strategy Adviser concluded that the appeal against the BBC's decision not to respond further to these complaints should not proceed to the ESC.

The complainant requested that the Trustees review the decision 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 Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the correspondence at Stage 1.

The Committee noted that the complainant had made his appeal to the Trust after the specified deadline for doing so. The Committee noted the complaints and the responses from the BBC. The Committee agreed that the BBC's responses had been reasoned and that the complaints were based on a misconception of the requirements of the Impartiality Guidelines. The Committee agreed that there was no reasonable prospect that it would uphold an appeal against the decision taken at Stage 1 not to provide any further responses to these complaints. The Committee was satisfied that there was no compelling reason to make an exception to the deadline set out in the procedure in order to consider the appeal.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.

The BBC's decision not to reply further about: *The Truth of the Matter* trail, BBC Radio Jersey, 20 February 2012

The complainant contacted the BBC regarding a "programme" [in fact an item] entitled *The Truth of the Matter* which she said was trailed but not broadcast by BBC Radio Jersey. The complainant made allegations of bias at BBC Radio Jersey as she believed the cancelled programme may have been removed from the schedule because of political pressure. The complainant also raised concerns about how her complaint had been handled.

Appeal to the Trust

The complainant appealed to the BBC Trust saying that she had deep concerns about the conduct and ethics of BBC Jersey in relation to the BBC's commitment to fairness, accuracy, truth and impartiality. The substance of her complaint was that on 20 February 2012, presenter Roger Bara announced the launch of a new BBC Jersey programme entitled *The Truth of the Matter*. The complainant assumed that this programme would relate to a statement by former Police Chief Graham Power which had been provided to BBC Jersey in September 2011 and which the complainant felt had not been adequately investigated. The complainant believed this lack of coverage amounted to a breach of the BBC's guidelines on impartiality. She said that broadcasting *The Truth of the Matter* would afford BBC Jersey the opportunity to restore balance and demonstrate editorial rigour and independence from external interests.

The item was not broadcast and, when the complainant contacted the BBC, BBC Radio Jersey advised that no such programme had been planned and suggested that the complainant might have misheard Roger Bara. The complainant believed this was an attempt to "stonewall" her, and said it was a breach of the BBC's guidelines on accountability and fairness.

The complainant said that if no such programme had been planned, the item broadcast on 20 February 2012 was misleading information and breached the BBC's guidelines on accuracy.

The complainant's suspicion was that the programme was cancelled because the Editor wished to avoid political pressure. She cited concerns that BBC Jersey was unduly influenced by outside interests.

In the complainant's letter of appeal to the BBC Trust she said that her appeal focussed on "...the BBC's handling of child abuse in Jersey..."

The complainant stated her concerns about the BBC's coverage of the Jersey general election in October 2011 and made other points alleging a culture of suppression of opposing views in Jersey.

The complainant wrote again on 18 October 2012 linking to a blog which made allegations that the BBC had refused to cover a statement by Police Chief Graham Power in the context of child abuse on Jersey.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser replied saying that she had listened to the item broadcast by Roger Bara, which was as the complainant described.

The Senior Editorial Strategy Adviser explained that the recording of this item was not available to BBC Radio Jersey at the time of the complaint as it fell outside the normal archiving period for most BBC Local Radio programmes. Ofcom requires broadcasters to “make and retain for a period of 42 days from the date of its inclusion therein, a recording of every programme”. However, the Editor of BBC Jersey had managed to obtain a copy of the programme for the Trust from a contact. The Senior Editorial Strategy Adviser noted that the item, a trail, was ad-libbed by the presenter and, therefore, a written script does not exist in the archiving system used for scripts and running orders (ENPS).

The Senior Editorial Strategy Adviser said that, having listened to the extract, it was clear that the presenter was trailing forward to an item to be featured within the breakfast programme in the next few minutes, rather than to a separate programme. The Senior Editorial Strategy Adviser provided a transcript of the trail:

“Later on in the programme, in a few moments, we start a series that aims to get to the truth of the matter. There are various views expressed here on BBC Radio Jersey and indeed around the island but how many of them are factual. You know what I am talking about. Well wait and see what we come up with for the first of the series, the truth of the matter, coming up here on Breakfast with Bara...”

The Senior Editorial Strategy Adviser said that the ENPS system also contained an introduction to an un-broadcast item that was scheduled to run in the same programme:

“Now, is there anything that you’ve always wanted to know the answer to? It’s often easy to take things for granted. For example whether traffic wardens have a parking ticket quota? Or whether St Peter really is the foggiest place in Jersey to build an airport? Well, today here on Breakfast with Bara, we’re launching a new series, looking into the widely held beliefs you may hear on this show and elsewhere in the island. We want to get to the bottom of it. What’s fact and what’s fiction? We thought we’d start with a comment from a caller that people come to work here from outside the island from places such as Portugal, Poland and Latvia, make money and send it home. It was argued that the island doesn’t benefit from these people. How true is this? Well, in a moment we’ll be speaking to [name of interviewee] of the Portuguese Community – but first, here’s BBC Radio Jersey’s [name of reporter] with some facts and figures...”

The Senior Editorial Strategy Adviser said that the trail which was broadcast, and the scripted introduction which was not broadcast, indicated that the planned item was intended to be about discussing local quirks and answering queries, rather than addressing serious political matters.

The Senior Editorial Strategy Adviser explained that radio breakfast programmes have flexible running orders to accommodate breaking or developing news stories. Running orders often change because interviewees are not available at the last minute or because reporters need to be deployed elsewhere. She said that, in this instance, the Editor of Radio Jersey had since given the Trust further information about that morning’s coverage and said the item was dropped because the interviewee from the Portuguese community failed to turn up.

The Senior Editorial Strategy Adviser said that her review of the evidence did not support the complainant’s belief that the planned item related to the story of the former Police Chief; nor could she find any evidence to suggest that it was dropped for anything other than normal operational reasons. The Senior Editorial Strategy Adviser said that, whilst it can be frustrating for listeners to hear an item trailed and then not broadcast, this would

not amount to misleading audiences, as defined under the BBC's Editorial Guidelines; changing a running order is part of the normal editorial practices of producing a live radio news programme.

Complaint handling

The Senior Editorial Strategy Adviser noted that on 19 June and 24 July 2012 the Editor of Radio Jersey explained that no such programme had been commissioned. The Senior Editorial Strategy Adviser had concluded that this explanation was accurate: this was a series of feature items within *Breakfast*, rather than a separate programme that had been commissioned and then cancelled. The Senior Editorial Strategy Adviser said that the confusion may have been dispelled earlier had the programme team been able to hear the item in question but, as had been explained, programme tapes are only kept for a short amount of time and the script in question was not archived as it was ad-libbed.

The Senior Editorial Strategy Adviser explained that the BBC's editorial complaints procedure states:

"Within 30 working days (or exceptionally the BBC may allow longer if the BBC decides there is a good reason for the delay) from the transmission or publication you can:

- (a) make a complaint via the complaints website: www.bbc.co.uk/complaints
- (b) or ring BBC Information on 03700 100 222
- (c) or write to BBC Complaints, P0 Box 1922, Darlington, DL3 0UR."

This complaint about the trail broadcast on 20 February 2012 had been raised on 23 April 2012, which was outside this period. Despite this the BBC went to some lengths in twice consulting the Managing Editor of BBC Radio Jersey about the complaint. The Senior Editorial Strategy Adviser said that to have investigated further would have been disproportionate in these circumstances.

The Senior Editorial Strategy Adviser said that the complainant had not provided any evidence of a breach of any of the BBC's Guidelines and she did not believe that the appeal raised a matter that the ESC should consider. The Senior Editorial Strategy Adviser therefore did not propose to put the appeal to the ESC for consideration.

The complainant requested that the Trustees review the decision not to proceed with her appeal. The complainant questioned the evidence on which the Senior Editorial Strategy Adviser had based her conclusion about the nature of the "Truth of the Matter", and the reasons for it being dropped from the schedule. The complainant said that the transcript provided by the Senior Editorial Strategy Adviser differed from hers in the first line and therefore she questioned its accuracy. The complainant reiterated her criticisms of BBC Radio Jersey's response to her complaint.

The complainant expressed her belief that BBC Radio Jersey was complicit with the Jersey Government in a cover up of child abuse.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the correspondence at Stage 1. The Committee was also provided with the trail in question.

The Committee noted the complainant's strong belief that BBC Radio Jersey was complicit in a cover up of child abuse. Having reviewed the correspondence and noted the points made by the complainant, the BBC and the Trust's Senior Editorial Strategy Adviser, the Committee agreed that the evidence did not support the complainant's allegation in relation to the unbroadcast Radio Jersey item. The Committee considered that the complainant's allegations about the evidence which had been found by the Senior Editorial Strategy Adviser were hypothetical and without basis in fact. The Committee accepted that there was a minor error in the first words of the transcript provided by the Senior Editorial Strategy Adviser; however, this was not material to the meaning.

The actual wording was:

"Now, er, later on in the programme, in a few minutes, we'll be launching a series which aims to get to the truth of the matter..."

As opposed to what was transcribed by the Senior Editorial Strategy Adviser:

"Later on in the programme, in a few moments, we start a series that aims to get to the truth of the matter..."

The Committee agreed that the BBC's responses to the complainant had been appropriate and proportionate given the circumstances and there was no reasonable prospect that it would uphold an appeal against the decision not to reply further to the complaint.

The Committee therefore decided that this appeal did not qualify to proceed for consideration.