

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 five Trustees: Alison Hastings (Chairman), Mehmuda Mian, 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

Steve Wright's Sunday Love Songs, BBC Radio 2

The complainant said that listeners, unaware that the programme was not transmitted live, might spend time and money contacting the programme with a dedication after the programme had been recorded. The complainant said that these callers would not only have wasted their efforts, but would also suffer the disappointment of listening to the programme for a particular song or dedication when there was no chance that it would be included. During the course of the complaint the BBC amended the on-air "call to action" and the message on the programme's telephone lines. The complainant said that the amended wording did not address the problem.

The Committee concluded:

- that the general "as live" tone of the programme was an established radio production technique and that the Editorial Guidelines were not engaged by the fact that it was usually pre-recorded, provided that the content of the programme did not breach the Guidelines.
- that the on-air "call to action" on 6 November 2011 was not clear and precise in informing listeners that they would have to call before the cut-off point in order to have a dedication included in a particular show.
- that the wording of the call to action on 6 November 2011 and other programmes in the series which used the same wording did not achieve due accuracy.
- that the on-air "call to action" for the programme of 6 November 2011 and the telephone message had breached the Guidelines on Interacting With Our Audiences.
- that it was now clear from both the revised "call to action" and the telephone message that dedications would be considered for future programmes, rather than the one currently on-air.
- that the revised wording of the on-air call to action was still in breach of the Guideline on Accuracy in that it was not clear and precise in informing listeners that they would have to call before the cut-off point in order to have a dedication included in the next show.
- that the call to action and accompanying telephone message should be amended to reflect the fact that calls made to the programme after a certain point in the week would not be used on the following Sunday.
- that the BBC had not intentionally misled its audience, but that the problem was essentially one of a lack of clarity.

The complaint was upheld with regard to Accuracy and with regard to Interacting with our Audiences.

For the finding in full see pages 7 to 15.

Six O'clock News, BBC Radio 4, 15 May 2012

Complainants said that an introduction to a Radio 4 news bulletin about rallies in the West Bank commemorating Nakba Day was inaccurate and misleading. Complainants said that it was inaccurate to state that Nakba Day is the anniversary of Israel's declaration of statehood in May 1948, and that to say this resulted in Palestinians "leaving their homes" misrepresented the conditions under which they departed.

The Committee concluded:

- that, although the news item explicitly made the link between Israel's declaration of independence and the "resulting" departure of Palestinians, there had been a lack of clarity as to what Nakba Day commemorates in the introduction.
- that the introduction failed to use clear, precise language about what Nakba Day commemorates, and this was a breach of the Accuracy Guidelines.
- that the use of the word "left" to characterise the departure of the Palestinians failed adequately to convey the reality of the departures, and this was a breach of the Accuracy Guidelines.
- that the failures of accuracy in respect of the introduction had not led to a failure of impartiality, and due weight had been applied to the main perspectives in what was the focus of the story.

The complaint was upheld with regard to Accuracy.

For the finding in full see pages 16 to 25.

Six Nations: Scotland v England, BBC One, 4 February 2012

The complainant said that the use of a filmed introduction which set the rugby match between Scotland and England in the historical political context of the Union was inconsistent with the BBC's reasons for not including the First Minister in the programme. The complainant said that the filmed introduction was inaccurate in its description of the Hanoverian forces at the Battle of Culloden as English and its statement that the battle ensured that Scotland and England remained united.

The Committee concluded:

- that it was duly accurate for the programme to have stated that the Duke of Cumberland's victory at Culloden Moor ensured "...that Scotland and England remained a United Kingdom."
- that it had not been duly accurate to describe those who fought against Charles Stuart at Culloden as "English", given the large number of Scots who fought among the Hanoverian forces.
- that the decision to set the match in a historical political context, and the use of the filmed introduction by John Inverdale to do so, was a legitimate editorial decision, as was the decision not to include the First Minister.
- that, notwithstanding the failure to achieve due accuracy in one respect, the Impartiality Guidelines had not been breached.

The complaint was upheld in part with regard to Accuracy.

For the finding in full see pages 26 to 33.

One O'clock News, BBC Radio 2, 6 June 2012

The complainant said that a BBC Radio 2 news report on financial problems at an NHS Trust was biased and inaccurate in stating that the Trust's debts "...have become unsustainable largely as a result of contracts agreed under the Private Finance Initiative".

The Committee concluded:

- that the word "largely" does not have to relate to the size of the debt but rather to the significance of PFI costs to Health Trust's financial viability.
- that, while it may have been preferable to have said PFI costs were a significant factor in the financial problems, the wording that was used did not breach the Accuracy Guideline requirement for clear, precise language on the basis that the word "largely" could be interpreted in the context of the bulletin to mean "to a large extent".
- that the use of the word "largely" in the bulletin was duly impartial.

The complaint was not upheld.

For the full finding see pages 34 to 41.

From Our Own Correspondent, BBC Radio 4, 5 November 2011

The complainant raised issues with a report about the new Jerusalem tram. The complainant said that a statement in the report that, "The western part of Jerusalem, captured by Israel in 1948, is quite different... from the eastern part of the city" implied that the whole of Jerusalem was in Israeli hands purely by conquest. The complainant alleged that this was inaccurate and deliberately misleading.

The Committee concluded:

- that exactly who was living in the area was of less importance to the use of the word "captured" than whether there had been fighting over this territory, and the question was not one of nationality but of sovereignty.
- that "captured" could mean occupying without conflict but that in this case there had been fighting and not just a peaceful occupation of the area described, which rendered the use of the word "captured" duly accurate.
- that, in the context of this item on the tram and the areas it traverses, it was duly accurate to refer to the western part of Jerusalem as having been "captured by Israel in 1948".
- that, given this was duly accurate, the wording was not knowingly misleading.

The complaint was not upheld.

For the finding in full see pages 42 to 47.

Appeal Findings

Steve Wright's Sunday Love Songs, BBC Radio 2

1. Background

Steve Wright's Sunday Love Songs, broadcast between 9am and 11am on Sunday mornings on BBC Radio 2, is a programme which plays songs with a love theme, interspersed with telephone recordings of listeners' dedications to their loved ones and Steve Wright's reading of dedications which have been sent in by letter or email/website. During the programme Steve Wright makes a "call to action" in which he invites listeners to phone or send in their dedications for use on the programme. The 6 November 2011 edition was preceded by a radio announcement saying that the programme had been pre-recorded and this prompted the complainant to write to BBC Audience Services.

He complained that listeners who are unaware that the programme is not transmitted live might spend time and money contacting the programme when there is no chance that their dedications will be used.

2. The complaint

Stage 1

The complainant contacted BBC Audience Services on 7 November 2011 saying he was "disappointed and disillusioned to hear an announcement on Radio 2 on the morning of Sunday 6th of November that the programme *Steve Wright's Sunday Love Songs* had been pre-recorded". This had been specifically announced because the programme conflicted with an earlier news item about Andy Williams. He asked whether the programme is always pre-recorded, and if so when. He also requested a list of all daily/weekly programmes on Radio 2 which are pre-recorded.

The BBC replied informing the complainant as follows: "Steve Wright's Sunday Love Songs is always pre-recorded. It is usually recorded on a Friday morning. In terms of BBC radio, whether a programme is recorded or not, is not a compliance issue." This letter acknowledged his request to know which other programmes are pre-recorded but did not respond on this point.

Following his second request for information about pre-recordings, the BBC stated that this was not a service the BBC provided.

The complainant wrote again complaining that many listeners see presenters as "company" and stated that he would no longer listen to the programme now that he knew it was effectively a "recorded message". He also complained that anyone who contacts the programme after it has been recorded on a Friday morning for a dedication that following Sunday would effectively be "wasting their time and their money". He stated he had telephoned the dedications line to see whether the BBC message made this clear but it did not. The complaint was escalated to Stage 2 of the BBC's Complaints Process.

Stage 2

The Compliance Editor for Radio 2 wrote to the complainant explaining that the majority of the programmes on Radio 2 are broadcast live and whilst there is sometimes a need to pre-record some shows on the network they make up a small percentage of the output. He stated that he did not believe Radio 2 was required to provide a list of programmes

that it records.

With regard to the point that listeners were being charged for calling in to the programme and leaving a message that would not be broadcast, the Compliance Editor explained that Steve Wright would now make it clear that callers were leaving messages that might be used in future shows. He added that the message on the phone line had also been changed to ensure that listeners would know that by calling in and leaving a message there was no guarantee of being included in the programme.

Appeal to the Trust

The complainant first wrote to the Trust on 17 April 2012, but this letter did not reach the Trust and he wrote again copying his original letter of appeal on 22 July 2012. The Trust Unit replied on 1 August 2012 stating that it would now consider the request for an appeal.

The complainant stated that he was “wholly dissatisfied” with the BBC’s response to his complaint. He was unhappy that *Steve Wright’s Sunday Love Songs* was not broadcast live and referred to his earlier correspondence with the BBC which explained that this was significant to him because listening to a live broadcast allowed him to feel that he had company.

He outlined three areas of complaint: firstly, he was unhappy that the BBC had not listed which Radio 2 programmes were live and which pre-recorded, informing him instead that it was not required to release that information.

The second aspect of his complaint related to Audience Services’ complaints handling, in that his earlier request to have information about live and pre-recorded programmes had been ignored and he queried why that was.

His third point was that the BBC had not addressed his concern that listeners, unaware that the programme was not transmitted live, might spend time and money contacting the programme after it had been recorded. They would not only have wasted their efforts, but would also suffer the disappointment of listening to the programme for a particular song or dedication when there was no chance that it would be included. He felt this amounted to “a completely unacceptable disregard for listeners”.

The decision of the Head of Editorial Standards

The Trust’s Senior Editorial Strategy Adviser wrote to the complainant on 14 September 2012 informing him that the Head of Editorial Standards had decided not to proceed to the Complaints and Appeals Board of the BBC Trust (CAB) regarding the first and second points in his letter of appeal.

The Senior Editorial Strategy Adviser explained that the first point, namely the BBC’s decision not to send the complainant a list of which Radio 2 programmes were pre-recorded, was an operational matter for BBC Management, and therefore not subject to review by the BBC Trust.

Turning to his second point (that his earlier request for information about pre-recorded programmes was ignored), the Senior Editorial Strategy Adviser noted that in their letter of 26 January 2012, BBC Audience Services had provided a response to his request for information about pre-recorded programmes, stating: “This is not a service we provide, with this in mind it would not be a proportionate use of licence fee resource to fulfil your requests for additional information regarding a list of all daily/weekly programmes on

Radio 2 which are pre-recorded”.

Since this was, as stated above, an operational matter for BBC Management, and a full explanation had been provided, the Senior Editorial Strategy Adviser explained that the Head of Editorial Standards did not consider that these aspects of the complaint had a reasonable chance of success therefore it was not appropriate for them to proceed to the CAB for consideration.

The Head of Editorial Standards did, however, consider that the complainant’s third point, that listeners, unaware that the programme was not transmitted live, might spend time and money contacting the programme after it had been recorded with no chance that their dedications would be broadcast, should be taken on appeal to the Editorial Standards Committee (ESC).

The complainant challenged the Head of Editorial Standards’ decision not to proceed with points 1 and 2. His challenge was considered by Trustees at a meeting of a panel of the CAB on 4 October 2012. The panel agreed that these two elements of the complaint should not proceed for consideration on appeal. This decision has been published on the Trust website.

3. Applicable Editorial Guidelines

The following sections of the BBC’s Editorial Guidelines were considered in relation to this complaint:

Section 3 – Accuracy

3.1 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.

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

3.2.2 All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don’t know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

Section 17 – Interacting with our audiences

17.1 Trust is the BBC’s most important value and we must not undermine public trust in the BBC. We will maintain an honest and open relationship with our audiences and we will not intentionally mislead them. When the public engages with us through interactivity they will be treated with respect, honesty and fairness.

17.2.3 When we offer interactivity to our audiences on our publicly funded channels, it must add public value and enhance our output in a way which fits our public service remit. It must also be distinctive, have a clear editorial purpose and match the expectations of the likely audience.

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 complainant's appeal, the Editorial Adviser's report, and the subsequent submission from the complainant.

The Committee noted that *Steve Wright's Sunday Love Songs* is usually pre-recorded on Friday mornings to be broadcast "as live" the following Sunday. The script and running order for the programme are normally finalised on a Thursday afternoon. The programme plays songs with a love theme, interspersed with telephone recordings of listeners' dedications to their loved ones, and Steve Wright's reading of dedications which have been sent in. A number of times during the programme Steve Wright invites listeners to phone or send in their dedications for use on the show.

An announcement prior to the start of the programme on 6 November 2011 made it clear that it had been recorded earlier so as to explain a conflict between the programme and an earlier news item. The wording of the announcement was:

"Time now for *Steve Wright's Sunday Love Songs* on Radio 2. The programme was recorded before this morning's news about Andy Williams."

The Committee noted that it was this announcement that had alerted the complainant to the fact that the programme is not presented live and consequently to the fact that listeners contacting the programme thinking it was live and hoping to get their dedications on later in the show would be wasting their time and potentially also their money.

The Committee also noted the complainant's contention that, because *Steve Wright's Sunday Love Songs* is pre-recorded on a Friday, anyone who sends an email or incurs the charge for making a telephone call on Fridays or Saturdays to request a dedication specific to the forthcoming Sunday is effectively wasting their time and money. They would also be disappointed if listening out for the dedication on a Sunday with no chance it would be included. He complained that this was unfair and misleading to listeners, especially if their dedications were date specific, for example celebrating an anniversary or birthday.

The Committee was asked to consider firstly whether the programme of 6 November 2011 breached the Guidelines on accuracy. In particular:

- Does the Committee consider that the programme achieved due accuracy in a way that was adequate and appropriate to the output taking into account the subject and nature of the content, the likely audience expectation, and any signposting that may influence that expectation?
- Does the Committee consider the BBC has demonstrated that the content was presented in clear, precise language?
- In respect of the point made by the complainant that the programme inaccurately suggested listeners could get their dedications onto the live programme, does the Committee consider that the BBC knowingly and materially misled its audiences with its content? In particular did it undermine the audience's trust in the BBC's content?

The Committee considered the fact that this programme is usually pre-recorded. It noted

that the general tone of the programme and the way the presenter talks throughout the programme is such that it sounds as though he is speaking live in the studio. It considered in particular some of the phrases used by Steve Wright in the programme on 6 November 2011, as examples of his usual presenting style:

SW: (Intro, following jingle): Oh that's us, thank you very much. Hello, good morning, this is *Sunday Love Songs*...

SW: (Following first song): Here I am dishing out love and affection and good feeling like some kind of Sunday morning crazy boy... And we've got your well-written letters of love and affection; your perfectly spelled emails ... honed and well rehearsed phone calls ... well under cloudy skies I'm thinking...

SW: (later in show): Daylight saving time ended this morning in America...

SW: I'm gonna take some calls next, and then Frank Sinatra... Hello good morning –

Caller: "Hello Steve –"

SW: Go on!

Caller: [continues with dedication]

SW: Right!

Next Caller: [Dedication]

SW: (after end of Frank Sinatra song): Good morning from Radio 2, that's Frank Sinatra ... this is Love Songs and Coldplay.

SW: (in between two callers): Bye

SW: Good morning from Love Songs ... what about the stuff going on today. Stuff you might need to know ... [refers to TV programmes, NY Marathon etc]

SW: (reading out a dedication): "If our plan went accordingly we had a great surprise party last night"...So this was written in advance of that obviously...

The Committee noted that the presenter frequently made references to the weather or to events on the day of transmission and further noted that the only reason listeners would have realised the programme of 6 November 2011 was pre-recorded was because of the announcement before the programme on that particular day. The Committee was

satisfied that the general "as live" tone of the programme was an established radio production technique and that the Editorial Guidelines were not engaged by the fact that it was usually pre-recorded, provided that the content of the programme did not breach the Guidelines, in that it must not for example contain any inaccuracies or materially mislead audiences as to the procedures for getting their dedications announced on air.

The Committee noted that, at Stage 2 of the complaints process, the BBC had said that it would now be made "clear that callers are leaving messages that might be used in future shows. The message on the phone line has also been changed to ensure that listeners know that by calling in and leaving a message there is no guarantee of being included in the programme". The Committee noted that the complainant felt that this amended wording failed to address the problem he identified.

Original Wording

The Committee considered the wording which was used in the programme to encourage listeners to call or send in their dedications. The relevant words were:

"You can call and leave a message anytime on 03700 100 200. Standard geographic charges apply. Calls from mobiles may be higher."

On 6 November 2011, these words were included in the "call to action" as follows:

SW: Hey, D'you wanna get involved? Get involved with the show. Email Love songs at BBC.co.uk. Easy. Email lovesongs at bbc.co.uk, you can call and leave a message anytime, the number is 03700 100 200 and we'll do some more calls in a mo I think, er. Standard geographic charges apply, calls from mobiles may be higher. You can write to *Steve Wright's Sunday Love Songs* at [address etc]

[later in programme]:

SW: email lovesongs at bbc.co.uk, lovesongs all being one word of course, you can call and leave a message anytime, or write to, old style letter, *Steve Wright's Sunday Love Songs* at [address]

The relevant wording on the phone line at the date of the complaint was:

Message 1: "Thank you for calling the *Steve Wright's Sunday Love Songs* dedication request line. Please speak clearly; say who you are; where you're from; who the dedication's for; and why. When you've finished press the star key."

Message 2: "Thanks! We'll do our best to include your message in the next edition of *Sunday Love Songs*, but be aware calls may be edited for time and clarity."

Turning to the relevant Guidelines on Accuracy, the Committee considered whether the words used achieved due accuracy, and were in line with audience expectations.

The Committee agreed that in general audiences would understand that there was no guarantee that all calls would be used but that they would expect those who called in would have a chance of being used.

The Committee noted that the call to action on the programme made no reference to the fact that callers had no chance of getting their dedications used later in the programme, nor that if they called after a certain time on a Thursday, there would have been no

possibility of their dedications being used in the following Sunday's edition of the programme. Furthermore the telephone messages which were played to callers did not clarify these points, although the end message did make it clear that the message would be considered for the next edition (and so anyone who called whilst the show was on air hoping to get a call on that day's show would have realised that was not possible – but only after they had made the call and left the request.

The Committee noted that many of the calls to this programme, given the subject matter and content of the programme, would be date-specific in that callers would be likely to have a specific Sunday in mind, for example because it was on or close to an anniversary or birthday or other significant dates in the year, such as Mothering Sunday or Valentine's Day.

With regard to the specific edition of *Steve Wright's Sunday Love Songs* on 6 November 2011 the Committee agreed that it was unlikely that listeners who had heard the announcement at the start of the programme that it had been pre-recorded would have contacted the programme thinking it was live.

The Committee considered whether the audience's expectations would be, in the absence of any information to the contrary, that their phone calls on the day and throughout the week would have the possibility of being used on the date they had in mind. This included the possibility that if they called early on during a programme (other than the programme of 6 November 2011), their dedication might get into a later part of the programme on air. The Committee noted that the call to action stating "you can call and leave a message anytime" gave no indication that in fact there was a cut-off point every week (Thursday after the programme script was finalised) after which there was no possibility that a dedication would be broadcast on the following Sunday.

The Committee concluded that the on-air "call to action" on 6 November 2011 was not clear and precise in informing listeners that they would have to call before the cut-off point in order to have a dedication included in a particular show. However, the Committee considered that this inaccuracy was the result of a looseness of language and that it had not seen any evidence to suggest there was an intention to knowingly mislead listeners with regard to the chances of their request being included in the next programme.

The Committee therefore concluded that the wording of the call to action on 6 November 2011 and other programmes in the series which used the same wording did not achieve due accuracy in a way that was adequate and appropriate to the output taking into account the subject and nature of the content, the likely audience expectation, and any signposting that may influence that expectation. Clear and precise language had not been used.

Turning to the Guidelines on Interacting With Our Audiences, the Committee considered the following questions:

- Does the Committee consider the BBC maintained an honest and open relationship with its audiences and did not intentionally mislead them?
- Were the public engaging with the programme treated with respect, honesty and fairness?

The Committee noted the wording of the call to action on 6 November 2011:

SW: Hey, D'you wanna get involved? Get involved with the show. Email Love songs at BBC.co.uk. Easy. Email lovesongs at bbc.co.uk, you can call and leave a message anytime, the number is 03700 100 200 and we'll do some

more calls in a mo I think, er. standard geographic charges apply, calls from mobiles may be higher. You can write to *Steve Wright's Sunday Love Songs* at [address etc]

The Committee agreed that this wording was not clear enough. The Committee considered that audiences might reasonably assume that the fact they could call "anytime" as stated by the presenter meant that their calls would be taken into account "anytime" for inclusion in a programme. Since this was not the case, the Committee considered that the BBC was in breach of the requirement to maintain an open relationship with its audiences and also that the public engaging with the programme were not treated with fairness. However, the Committee found that this lack of fairness was not intentional or dishonest.

With regard to the telephone message, the Committee noted this stated that: "We'll do our best to include your message in the next edition of *Sunday Love Songs*, but be aware calls may be edited for time and clarity."

The Committee considered that, while preparing listeners for the fact that their dedication may not be included in the next show, this did not reflect the reality that if the dedication had been left after the cut-off, there would be no chance of it being included in the next show. The Committee agreed that the result of this was that the public engaging with the show in this way were not being treated openly and with fairness and that this was a breach of the Guidelines on Interacting With Our Audiences.

The Committee therefore found that there had been a breach of the Accuracy Guidelines with regard to the original "call to action". The Committee also found that the on-air "call to action" for the programme of 6 November 2011 and the telephone message had breached the Guidelines on Interacting With Our Audiences.

Revised Wording

The Committee then considered the revised wording of the "call to action" and the revised telephone message which accompanied it, both of which had been changed as a result of the comments made by the complainant in his initial complaint.

The revised on-air "call to action" was:

"You can call and leave a message for future shows anytime on 03700 100 200. Standard geographic charges apply. Calls from mobiles may be higher."

The revised telephone message was:

"Please note that not all messages can be used and some may be saved for future shows. Thanks for calling."

The Committee noted that it was now clear from both the "call to action" and the telephone message that dedications would be considered for future programmes, rather than the one currently on air.

However, the Committee noted that the revised wording of the call to action still did not specify that listeners who contacted the programme after the cut-off point on a Thursday, when the programme script was finalised, would have no chance of their dedication being played on the following Sunday's edition.

The Committee concluded that the revised wording of the on-air call to action was therefore in breach of the Guideline on Accuracy in that it was not clear and precise in

informing listeners that they would have to call before the cut-off point in order to have a dedication included in the next show. As with the original wording, the Committee did not believe that the BBC had intentionally misled its audience, but that the problem was essentially one of a lack of clarity.

The Committee then considered the revised wording of the on-air call to action, and the telephone message, against the Guidelines on Interacting With Our Audiences. The Committee concluded that neither made it clear that there was a cut-off point on a Thursday for submitting a dedication for the next Sunday's show. The Committee agreed that this did not treat those who engaged with the programme fairly because listeners might be misled by the call to action as described above. The Committee considered that the call to action and accompanying telephone message should be amended to reflect the fact that calls made to the programme after a certain point in the week would not be used on the following Sunday.

The Committee considered whether it would be possible for a form of words to be used by the presenter which would make it clear that any calls made after a certain time, for example, noon on a Thursday, would not be used on the following Sunday's programme, and it concluded that it would be relatively easy for an appropriate form of words to be constructed to replace the current wording which was in breach of the Guidelines on Accuracy and on Interacting With Our Audiences.

Finding: Upheld on Accuracy and on Interacting with our Audiences.

Six O'clock News, BBC Radio 4, 15 May 2012

1. Background

This is a consolidated appeal representing two appeals to the Trust about a news item on rallies in the West Bank commemorating Nakba Day.

The item consisted of an introduction from the newsreader followed by a short location report from the BBC's West Bank correspondent. He reported on clashes between Palestinians and Israeli soldiers on the annual Nakba Day commemoration. The content which is the subject of this complaint was in the introduction to the item, not in the news report itself.

The introduction to the item read as follows:

"Officials from the Palestinian Authority say around sixty people were injured in clashes with the Israeli Army as thousands of Palestinians took part in rallies marking what's known as Al-Nakba Day. It's the Anniversary of Israel's declaration of statehood which resulted in thousands of Palestinians leaving their homes."

The first allegation in this appeal is that it was incorrect for the bulletin to state that Nakba Day is the anniversary of Israel's declaration of statehood in May 1948 as Nakba Day commemorates the entire period of the Palestinian exodus, from November 1947 until January 1949.

The second allegation is that a considerable number of the 700,000 or so Palestinians who left their homes were forcibly expelled; describing their departure as "leaving their homes" failed to convey any understanding of what happened.

2. The complaint

Stages 1 & 2

Two appeals were received by the Trust in relation to the programme. Each complainant had originally raised a number of points at earlier stages of the complaints process and had received responses at Stage 1 from either BBC Audience Services or the Radio Newsroom Editor. Both complainants received Stage 2 responses from the Editorial Complaints Unit.

One of the allegations was upheld by the ECU. It concerned the introduction to the item which read as follows:

"Officials from the Palestinian Authority say around sixty people were injured in clashes with the Israeli Army as thousands of Palestinians took part in rallies marking what's known as Al-Nakba Day. It's the Anniversary of Israel's declaration of statehood which resulted in thousands of Palestinians leaving their homes."

The complainants alleged that using the figure "thousands" to describe the number of Palestinians who were "displaced" was misleading.

The ECU agreed. It said that, while estimates of the numbers varied, a reliable figure seemed to be around 700,000 and that "...to refer to thousands in this context would have had the potential to mislead audiences as to the scale of what happened and the numbers of Palestinians affected".

The ECU said that the risk of misleading audiences was heightened by also using the word "thousands" to describe the number of people protesting on Nakba Day:

"...which suggested equivalence between that number and the number of Palestinians displaced in 1947-1949."

The ECU said the language used did not meet the BBC's editorial standards for accuracy.

The other allegations made by parties to this consolidated appeal were not upheld by the ECU at Stage 2. These allegations included concerns raised by both complainants about the description in the same sentence of the introduction, of the circumstances under which the Palestinians left:

"It's the Anniversary of Israel's declaration of statehood which resulted in thousands of Palestinians leaving their homes."

The complainants argued that the phrasing omitted any sense of coercion or compulsion and implied that the Palestinians' departure was voluntary, which did not accord with the evidence. One complainant said that "the majority of Palestinian refugees were either physically expelled by the Israeli military, or, fled their homes out of fear/to escape the war". The other stated that the wording used by the BBC was "so low key as to suggest a voluntary exit".

At Stage 1, the Radio Newsroom Editor said in response to one of the complainants:

"...the version of events is disputed: to state unequivocally either that the Palestinians were forced to flee or that they departed voluntarily is to invite complaint from the many constituencies within the Palestinian and Israeli communities. The contentiousness around recent history in the region prompts us to use neutral language. However, I think use of the word 'leaving', while accurate in one sense, does not properly reflect the nature of events: 'fled' or a phrase like 'lost their homes' would have been better."

The ECU agreed and said that many who had left were fleeing Israeli forces and that some who left of their own free-will, did so from fear of the consequences of staying. It said that more information or a more appropriate choice of words would have given listeners a clearer sense of what had happened. However, the ECU did not uphold the allegation, stating that "leaving their homes" was not materially misleading in the context because:

"...such a neutral phrase does not, in fact, offer any comment on the reasons for the displacement, but only notes that it happened."

Neither did the ECU uphold an allegation raised by one of the complainants concerning the definition of Nakba Day, the other point being considered in this appeal. The complainant asserts that Nakba Day marks the entire period of the Palestinian exodus, which began in November 1947 and linking Nakba Day to Israel's Independence Day gave an inaccurate impression of what Nakba Day commemorates.

The ECU said that there is broad agreement that Nakba Day commemorates the "catastrophe" faced by Palestinians following the founding of the State of Israel and that while they are not precisely the same thing they are intrinsically linked (with Nakba Day generally falling the day after the Israeli Day of Independence). In the ECU's view, listeners would not have been misled as to the meaning of Nakba Day.

Appeal to the Trust

The Head of Editorial Standards adopted a consolidated approach to the two appeals, in accordance with the Trust's Editorial Appeals procedure which states:

"If a large number of complainants appeal against a specific decision by the ECU or a senior BBC manager, some of these procedures will need to be adapted and a summary of the range of issues raised by their appeals will be compiled. The appeals will then be considered together across the full range of issues identified."

Two points were raised by the parties to the consolidated appeal:

- the introduction wrongly stated that "al-Nakba Day (is) the anniversary of Israel's declaration of statehood" whereas it is the action of Zionist forces in the entire period between November 1947 and January 1949 that is commemorated; a quarter of a million Palestinians were forcibly expelled before the State of Israel was created in May 1948
- the use of the word "leaving" in the introduction is misleading as it gives no sense of compulsion or coercion.

3. Applicable Editorial Standards

The following sections of the 2010 Editorial Guidelines are applicable:

Section 3 – Accuracy

3.1 Introduction

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

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...

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.

Section 4 – Impartiality

4.2.2

News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument.

4.4.2

...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.

4.4.7

When dealing with 'controversial subjects' we must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active. Opinion should be clearly distinguished from fact.

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 complainants' appeals, the Editorial Adviser's report, and the subsequent submission from one of the parties to the consolidated appeal.

For clarity in the finding the word "Palestinians" is used to describe the Arab population who left what was to become Israel during the period from November 1947 to January 1949, even though at that time these peoples were referred to as Arabs.

The Committee considered whether the BBC was duly accurate and impartial in how it described the Palestinians who left or were forced to flee what is now Israel.

The Committee noted that the two allegations which comprise the consolidated appeal both rely on the interpretation of a single sentence within the introduction to the news item. As such, while the allegations are discussed separately below, the Committee reached a single decision on both allegations and that decision is outlined at the end of the finding.

Point 1 – Regarding the allegation that the news bulletin was inaccurate in its definition of Nakba Day

The Committee noted that the allegation concerned the definition of Nakba Day in the newsreader's introduction:

Newsreader: Officials from the Palestinian Authority say around sixty people were injured in clashes with the Israeli Army as thousands of Palestinians took part in rallies marking what's known as Al-Nakba Day. It's the Anniversary of Israel's declaration of statehood which resulted in thousands of Palestinians leaving their homes.

Reporter: Around a thousand flag-waving Palestinians took to Ramallah's Central Square. Nakba Day is traditionally a sombre occasion. But for some this year the mood was more of celebration. People are happy with the deal to end a mass hunger strike by hundreds of Palestinian prisoners held in Israeli jails...

The Committee noted the detail of the allegation to the Trust from one complainant:

"This is not a question of dates – it is a question of what al-Nakba Day commemorates. The war that constitutes al-Nakba lasted from November 1947 until January 1949. Almost a quarter of a million Palestinians were forcibly expelled before the State of Israel was created in May 1948 ... it was the action of the Zionist forces over the whole fifteen month period that constituted al-Nakba ... This action occurred in order to make it possible to form the Israeli State... This error in definition is not trivial: most listeners will not form an accurate picture of events unless al-Nakba is accurately defined."

The Committee noted the response at Stage 1 from the Radio News Editor:

“The time allotted for this particular report (an introduction and a report from Ramallah, with references to the events of the day, those of the day before, a little historical context and analysis of the current situation) was 1’30” [one minute and thirty seconds]. The reason why our mention of ‘el nakba’ was so limited was because the main point of the story was to report on and analyse the latest news on the prisoner issue. You may be interested to know that our correspondent ... was able to include a lot more information about ‘el nakba’ in his two-ways with presenters on the BBC’s radio and TV channels. It may further interest you to know that we included more background information on ‘el nakba’ when we marked the anniversary a year ago.”

The ECU took the view that lack of precision about the meaning of Nakba Day did not result in a breach of accuracy:

“This section of the report, though clearly a very brief summary of the protests of the day, could have done more to explain the meaning of Al-Nakba. However my understanding is that Nakba Day primarily marks the displacement of the Palestinians and commemorates those who lost their lives in the conflicts which took place in 1947-1949. It seems to me that both are inextricably connected to the founding of the State of Israel, and that this is reflected by the fact that Nakba Day is marked on the day following Israeli independence. Therefore, while I agree that this could have been better put, I am not sure that listeners would have been materially misled by what was said, or that they would have come away from this bulletin with an inaccurate idea of al-Nakba.”

The Committee noted that Nakba Day was officially inaugurated as a day of commemoration by Yasser Arafat in May 1998 as a counterpoint to Israel’s celebratory Day of Independence: Israel’s victory was the Palestinians’ catastrophe.

The Committee noted that there was no translation of the meaning of Nakba Day in the news item – either in the introduction or in the item itself. The Committee noted that the literal Arabic is Yawm an-Nakba, which translates as “Day of the Catastrophe”. The Committee noted that Palestinians have chosen to mark the anniversary of their “catastrophe” to follow the day after the date in the Gregorian calendar which marks Israel’s declaration of independence.

The Committee noted one complainant’s assertion that almost 250,000 Palestinians were expelled before the declaration of the State of Israel in May 1948 and that, therefore, it was not the creation of the State of Israel that caused Al-Nakba. The Committee noted that this assertion contradicts the programme’s statement that Nakba Day commemorates the anniversary of Israel’s independence and the *subsequent* departure of Palestinians.

The Committee noted that a significant proportion of Palestinians left or were compelled to go prior to Israel’s declaration of statehood.

The Committee noted two relevant examples in the Arabic press or written from a Palestinian perspective where definitions of Nakba Day are discussed:

- an article about the meaning of Nakba for the Cairo newspaper, Al-Ahram. In 2004 Azmi Bishara, an Arab member of the Israel parliament, wrote:

"It is 56 years now and we are still trying to pinpoint 'the meaning of the catastrophe' – the 'catastrophe' or nakba standing for the war of 1948 and the creation of Israel..."

"When the nakba struck – that is, when the Jewish Yishuv leaders declared the independence of Israel and Israeli forces occupied portions of land that had been allocated to Palestine under the partition resolution – the Palestinians had no power to resist..."

- a review by Rashi Khalidi, the Edward Said Professor of Arab Studies at Columbia University, of a new book about the Nakba written in February 2012:

"This book is the most comprehensive and penetrating analysis available of the catastrophe that befell Arab Palestine and its people in 1948, known as the Nakba."

The Committee noted that the introduction to the news item explicitly made the link between Israel's declaration of independence and the "resulting" departure of Palestinians. The Committee considered that listeners would therefore be aware that the event is not a celebration for Palestinians and that Nakba Day is related to the Palestinian exodus. The Committee noted too that the news report itself stated that traditionally Nakba Day is a sombre occasion.

The Committee returned to this issue and whether it considered this was a breach or not when it considered the wording as whole later in its considerations.

Point 2 - Regarding the allegation that the use of the word "leaving" in the introduction is misleading as it gives no sense of compulsion or coercion

The Committee noted that this allegation also concerns the following sentence in the introduction to the news item:

"It's the Anniversary of Israel's declaration of statehood which resulted in thousands of Palestinians leaving their homes."

The Committee noted how one complainant challenged the ECU's reasoning for not upholding this aspect of his complaint:

"You [the ECU] argue that the phrase 'leaving their homes' is so neutral that it cannot offer any indication of what actually happened: but that is precisely my point; those words utterly fail to convey any understanding of what actually happened. Yet the BBC does know what happened and has the responsibility to use words that do convey understanding."

The Committee noted that the parties to the appeal cited research by Israeli and Palestinian historians. It noted one complainant's assertion that, while historians may disagree on some details, they do not disagree on the broad picture that extreme force was used to expel the Palestinians. In his view, there can therefore be no doubt that "planned violence was used by the Zionist forces to expel the Palestinians in an operation that is now described as Ethnic Cleansing".

The Committee also noted the Cambridge University Press online dictionary definition cited by another complainant:

- “to leave” means to “go away from someone or something, for a short time or permanently” (in respect of which this complainant noted there was no sense of compulsion)
- “displacement” means “when people are forced to leave the place where they normally live” (in respect of which this complainant noted that the aspect of coercion is clear and present).

And the complainant’s comment:

“And here’s the interesting thing – in the ECU’s efforts to explain why ‘leaving their homes’ was not misleading, they themselves used the word “displacement” three times in one paragraph.”

The Committee noted how the complainants had summarised their grounds for appeal on this point:

- The inescapable, logical conclusion is that the wording of the original phrase clearly does not communicate the historical record and thus misleads the audience
- The choice of wording meant the BBC presented only the Israeli narrative and that this had resulted in bias because it had failed to allude to the brutal force that was used to achieve the huge scale expulsion of Palestinians from their homes between 1947 and 1949.

The Committee noted that in response to this appeal the Radio Newsroom Editor reiterated his previous position:

“As you will have seen from my original response, I think ‘leaving’ fails to give a proper tenor to what happened. These were momentous events and our choice of verb isn’t dynamic enough.”

The Committee noted too the response to this appeal from the BBC West Bank Correspondent, whose report followed the introduction which is the subject of this complaint. He explained that he had supplied some suggested wording for the introduction, but it went to air slightly differently. The Committee noted this original, unbroadcast “cue”:

“Palestinians have been demonstrating to mark Nakba day which remembers the moment when hundreds of thousands of people lost their homes after the creation of the state of Israel in 1948. Palestinian doctors say dozens of people were injured in clashes with the Israeli army. The rallies came a day after a deal was reached to end a mass hunger strike by over 1600 Palestinian prisoners held in Israeli jails. From Ramallah here’s our West Bank correspondent...”

Turning to the allegation that the introduction as broadcast failed to convey an accurate impression of the circumstances of the departure of 700,000 or so Palestinians, the Committee noted that the issue of the fate of Palestinian refugees is as controversial today as it was when the events occurred and that it can be difficult to find dispassionate analysis of those historic events.

The Committee was mindful that it is not within its remit to reach a view on the causes of the departure of Palestinians. But in order to form a view on whether the introduction was duly accurate, it was able to consider what evidence exists to support the complainants' assertions that the introduction was misleading because the population were for the most part expelled and did not leave voluntarily.

The Committee noted one complainant's contention that the exodus of the Palestinians from the majority of British mandate Palestine was part of a master plan for ethnic cleansing devised by the Israeli state-in-waiting. It noted that this aspect of the appeal remains controversial and is the subject of continuing debate. Nevertheless, the Committee noted that, in his response to the background note prepared for this appeal, this complainant said that in the context of this aspect of his appeal it is not relevant that there might have been a "master plan":

"The crucial fact is that 85% of the Palestinians living in the areas that became the state of Israel were forcibly expelled and became refugees."

The Committee noted the use of primary source material (Israeli government archives and collections of private papers) by the Israeli historian Benny Morris with regard to the circumstances surrounding the departure of the majority of the Palestinians of what is now Israel.

The Committee noted that while Professor Morris' position has changed over the years and his analysis is currently more aligned with mainstream Zionist thought than it once was, the authenticity of his research is rarely challenged. That said, the Committee did note that, in his response to the background note prepared for this appeal, one complainant had cited a number of sources challenging Professor Morris' partiality.

The Committee noted Professor Morris' citation from a report written by Israeli military intelligence in June 1948 into the origins and causes of the exodus between November 1947 and June 1948, which suggested that around 70% of those who had left by June 1948 did so as the result of Israeli operations (including actions by dissident Jewish organisations).

The Committee noted too Morris' analysis of the intelligence document which suggests just 5% of the village evacuations were on the orders of local Arab commandeers and that the genuinely voluntary departures, according to the intelligence report, appeared to be very small in number (although the number is not specified), restricted mostly to the early months, and to the Arab "middle class" who, anticipating a war, took a decision to leave (possibly temporarily) whilst they could take their possessions and assets with them.

The Committee noted that the intelligence report cited by Morris covers only the period up until June 1948 and it analyses only the first 400,000 or so departures. Subsequent departures were, according to a number of respected academic sources, more likely to be forcible than voluntary and included departures due to violent, direct attacks on Arab populations. In this respect the Committee noted the work of the English historian, Christopher Sykes, who wrote in his book about the British Mandate:

"It can be said with a high degree of certainty that most of the time in the first half of 1948 the mass-exodus was the natural, thoughtless, pitiful movement of ignorant people who had been badly led and who in the day of trial found themselves forsaken by their leaders. Terror was the impulse, by hearsay most often, and sometimes through experience... But if the exodus was by and large an accident of war in the first stage, in the later stages it was consciously and

mercilessly helped on by Jewish threats and aggression towards Arab populations.”

The Committee noted that the general consensus today – including within Zionist circles – is that the departure of the majority of Palestinians was not a spontaneous exodus: that for the most part there is little evidence to support the contention that they left of their own free will or at the behest of their Arab leaders.

Conclusions

Turning to the allegations which are the subject of this appeal, the Committee decided that it needed to take into account the earlier finding by the ECU (that the item had been misleading in how it characterised the number of Palestinians who “left their homes” by suggesting it was thousands, rather than hundreds of thousands).

The Committee agreed that in this instance the disputed sentence in the introduction to the news item breached the Guidelines on Accuracy. In the Committee’s view, this failure of accuracy was a result of the combined effect of:

- understating the number of Palestinians who left
- failing to note there was a degree of force or coercion in the manner of their departure
- the lack of clarity as to what Nakba Day commemorates.

In respect of the use of the word “left” to characterise the departure of the Palestinians, the Committee took into account that the Radio Newsroom Editor had accepted from the outset that the introduction was flawed in that respect and had reiterated his view for this appeal.

The Committee did not agree with the ECU’s conclusion that a neutral verb was appropriate on this occasion and agreed that “left” was not the correct use of language and that it failed adequately to convey the reality of the departures.

The Committee concluded that the use of the word “left” in the introduction to the news item was a breach of the Accuracy Guideline which requires “clear, precise language”.

Turning to the introduction’s description of Nakba Day as the “anniversary of Israel’s declaration of statehood”, the Committee agreed that, although the news item explicitly made the link between Israel’s declaration of independence and the “resulting” departure of Palestinians, there had been a lack of clarity as to what Nakba Day commemorates. In particular, the Committee noted that Nakba Day (or “Day of Catastrophe”) was marked each year by Palestinians on the day following the anniversary of the founding of the State of Israel but that what it commemorated was the fact that hundreds of thousands of people had been forced, or felt obliged, to leave their homes over a long period leading up to, and following, the establishment of the new State. The Committee agreed that in this context the failure to use clear, precise language had resulted in this too being a breach of accuracy.

The Committee said that the failure of accuracy could have implied that Nakba Day is an Israeli event, not a Palestinian event, notwithstanding the reference in the news item itself to its being a sombre occasion.

The Committee then considered the item with regard to the Impartiality Guidelines. In the view of the Committee, the failures of accuracy in respect of the introduction had not led to a failure of impartiality. Whilst the introduction had not been clear and precise about Nakba Day and the departure of the Palestinians, the event was effectively a peg to a

news item about disturbances on the West Bank. The Committee was satisfied that due weight had been applied to the main perspectives in what was the focus of the story and that overall the item achieved the due impartiality required by the Guidelines.

Finding: Upheld with regard to Accuracy. Not upheld with regard to Impartiality

Six Nations: Scotland v England, BBC One, 4 February 2012

1. Background

The complaint related to an item that introduced the Six Nations rugby match between Scotland and England. This placed the forthcoming match in a context of past confrontations between the two countries. The complainant believed that the BBC was inaccurate to refer to the combatants at the Battle of Culloden as Scottish and English and to suggest that they were fighting to end or preserve the Union between the two countries.

2. The complaint

The complainant had initially written to ask why, if the BBC had withdrawn its invitation to the First Minister of Scotland, Alex Salmond, to appear ahead of the Calcutta Cup "given the nature of political debate around Scotland's future", the programme then contained an introduction which set the match in the context of the Union. The complainant also said that the introduction had been inaccurate in describing the Battle of Culloden as being between English and Scottish forces, and in stating that it was about preserving the Union. The complainant said that the battle in fact "marked the end of a religious dynastic struggle rather than the quelling of a secessionist uprising and its outcome safeguarded a Protestant dynasty rather than the Union".

In a letter of 17 February 2012 to the BBC Trust, he said that the substance of his complaint was not the exclusion *per se* of Mr Salmond but about the apparent inconsistency between the reasons the BBC gave at the time for the decision not to allow him to appear and the content of what the complainant described as John Inverdale's attempt to set the match in the context of historical conflicts between England and Scotland.

He said that the BBC had withdrawn its invitation for Mr Salmond to appear because of the political debate around Scotland's future. The complainant asked why, if that was so, Mr Inverdale set the match in the context of the Union and presented the English victory at the Battle of Culloden as an event that saved the Union when, he argued, this was not the case.

The Head of Editorial Standards, BBC Trust Unit, wrote to the complainant on 21 May 2012 to explain why the Trust would not be considering his appeal over the decision not to include Mr Salmond in its pre-match coverage of the Calcutta Cup.

The complainant emailed on 6 June 2012 to say he wished the Trustees to review this decision on the grounds spelt out in his letter of 17 February 2012. He said that Mr Inverdale had presented an inaccurate version of history which he said referred to the very Union that the BBC was supposed to be avoiding any reference to.

The complainant reiterated to the Trust that his complaint was not the exclusion *per se* of Mr Salmond but about the apparent inconsistency between the reasons the BBC gave at the time for the decision not to allow him to appear and the content of what the complainant described as John Inverdale's attempt to set the match in the context of historical conflicts between England and Scotland.

The BBC Trust passed the complaint back to the Executive to be addressed on these grounds.

BBC Audience Services wrote to the complainant on 6 July 2012 to say that the premise for the opening of this year's Calcutta Cup was the notion that throughout history England and Scotland had been at odds with each other, be that in a military, political or sporting context. It said that examples used by the programme of military conflict were the Battle of Bannockburn and the Battle of Culloden.

It said that while the armies that met on the battlefield of Culloden were not in name Scotland and England, their composition was primarily Scottish and English. It said that Bonnie Prince Charlie's army of 7,000 was made up largely of Scottish Highlanders while the Duke of Cumberland's 8,000 strong Government force was composed predominantly of English infantry regiments. It said there were some lowland Scots who fought on the Government side and one Manchester regiment that fought for the Jacobites.

BBC Audience Services said that given that this opening segment of the programme was about two minutes long, to go into the fine detail of the make-up of both armies would have meant probably missing the match.

It also said that openings to sports programmes were often a snapshot of history. It said that they were all looked at with the same philosophy – that is not to tamper or change it. It said that while there are facts and records present for events around the Battle of Culloden, there is also room for interpretation.

The complainant emailed BBC Audience Services on 30 July 2012 to say that he was unhappy with the way his complaint had been handled and with the response he had received from BBC Complaints about John Inverdale's introduction to the Calcutta Cup programme.

Appeal to the Trust

BBC Audience Services advised the Trust that it had replied to the complainant. The BBC Trust's Complaints Adviser, asked the complainant whether he wanted the Trust to consider his complaint concerning Mr Inverdale's introduction. The complainant confirmed that he did and asked that his letter of 30 July 2012 be taken as his letter of appeal.

In it, he said that the Battle of Culloden had nothing to do with preserving the Union between Scotland and England and so, in what he described as sensitive times on the subject, the programme should not have referred to it.

He said that not only was the programme incorrect but that he also believed it to be mischief making by describing the armies fighting in the Battle of Culloden as Scottish and English.

He said that BBC Audience Services had acknowledged that the armies were not split down national lines but had said that the Hanoverian or Government forces were predominantly composed of English infantry regiments. He said that while the majority of the Government's army was made up of English infantry, a significant proportion of it was also made up of Scottish battalions.

He said he wanted to reiterate that it was intellectually unsustainable to say that the Battle was between English and Scottish armies and they were fighting to end or preserve the Union.

3. Applicable Editorial Standards

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.

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

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

Where appropriate to the output, we should:

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

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

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

3.2.2 All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

4. The Committee's decision

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

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

This appeal raised issues requiring consideration of the Guidelines relating to Accuracy and impartiality. In particular, the Committee considered whether the programme had described the two armies and the role of the battle in preserving the Union with due accuracy.

The Committee noted the transcript of John Inverdale's introduction to the programme:

These days confrontations between Scotland and England are normally confined to the playing field; seven hundred years ago they were played out on the battlefield.

1314

Amid an atmosphere of fervent nationalism, Robert the Bruce's victory at Bannockburn sent Edward's army home to think again and secured Scottish independence from England.

1746

More than four centuries later, Culloden Moor witnessed a battle that saw English forces rout Bonnie Prince Charlie's army and ensure that Scotland and England remained a united kingdom.

Fast forward some two hundred years and military encounters gave way to sporting ones, but still the shadow of politics loomed large.

1980

Following a failed referendum on Scottish devolution just a year earlier, England came North and secured their first Grand Slam since 1957.

1990

A decade on and at the height of the Poll Tax controversy, Scottish defiance was never more in evidence than in the Five Nations Grand Slam decider at Murrayfield.

2012

And so to the present and with the ongoing debate about the future of Scotland as a backdrop, we prepare ourselves for the 130th match between these ancient rivals. Isn't it funny how history sometimes repeats itself?

In the 14th century, Henry of Lancaster led an English army into Scotland and today another Lancaster – one who had previously played for Scottish Universities and Scotland Under 19s – will hope to inspire his troops to a famous victory on hostile territory.

Preparing to repel the old enemy, a man who once proudly wore England's red rose. Can he for the first time as Scotland coach lead them to victory over the country of his birth?

While the outcome of this match will not determine the political landscape of either country, one thing is for certain: for 80 minutes tonight this is most definitely a union divided.

The Committee began by considering the history of the Jacobite movement. It noted that this had originated after the Catholic King James II was deposed and replaced by his Protestant son-in-law, William of Orange, in 1688. The Committee also noted that earlier Jacobite Rebellions had started in Scotland but that areas of England also rose up to support these.

The Committee then considered the events leading up to the Battle of Culloden. It noted that King James II's grandson, Charles Edward Stuart (referred to in the script as Bonnie Prince Charlie), chose to land in the Highlands of Scotland in 1745 before launching his campaign to win the throne back from the Hanoverians, and that the majority of his forces came from this part of the country.

The reference to ensuring the preservation of the Union

The Committee noted the relevant excerpt from John Inverdale's introduction:

More than four centuries later, Culloden Moor witnessed a battle that saw English forces rout Bonnie Prince Charlie's army and ensure that Scotland and England remained a united kingdom.

The Committee noted that the Act of Union in 1707 had joined the Kingdoms of Scotland and England. The Committee considered the implications of Charles Stuart decreeing that the Act of Union between the two countries be abolished once his forces took control of Edinburgh.

The Committee was mindful that it could not be sure of Charles Stuart's intentions for the Union. It noted that, once in control of Scotland, his forces did not stop but headed south into England. The Committee considered that, if Charles Stuart had succeeded in taking back the English throne, it remained unclear whether he would have ultimately preserved the 1707 Act or decided to end it by returning to the 1603 arrangement when the Stuarts ruled two separate Kingdoms. The Committee noted the complainant's point that the Battle of Culloden was not about the preservation of the Union but was primarily a dynastic struggle between the Jacobites and the Hanoverians. The Committee accepted that the potential effect of a Stuart victory at the Battle of Culloden was hypothetical, and it was possible that the Act of Union would not have been abolished had Charles Stuart gone on to capture the English throne. However, what could be said for certain was that the Hanoverians' victory at Culloden had not led to the abolition of the Union. The Committee noted that the introduction to the match had not stated that the motivation for the Battle of Culloden was the preservation of the Union, but rather it had commented on

an effect of the outcome – namely that the Union between Scotland and England was ensured.

The Committee concluded that it was therefore duly accurate for the programme to have stated that the Duke of Cumberland's victory at Culloden Moor ensured:

“...that Scotland and England remained a united kingdom.”

The description of the Hanoverian forces as “English”

The Committee noted again the relevant excerpt from John Inverdale's introduction:

More than four centuries later, Culloden Moor witnessed a battle that saw English forces rout Bonnie Prince Charlie's army and ensure that Scotland and England remained a united kingdom.

Turning to the battle itself, the Committee noted that the Hanoverian forces were made up of 16 infantry battalions, eleven of which were English, four were Scottish and one Irish. It also noted that, while Charles Stuart's army was predominantly made up of those from the Highlands of Scotland, it also contained French and Irish soldiers as well as a regiment from Manchester.

The Committee then considered whether, given that this two-minute item appeared in a sports programme, it was adequate and appropriate to refer to the army as English.

The Committee acknowledged that audience expectations would have been different from those watching a history documentary. However, it noted that there had been a conscious editorial decision in this item to place the rugby match in a political context. The Committee also noted that this introductory film made clear that the programme makers were aware of the current sensitivities between the two countries with the ongoing debate about devolution.

The Committee agreed that it was a legitimate editorial choice for the programme to put matters of a sporting nature into a political context, even taking into account that there were consultations on Scotland's future open at the time. However, particularly because of these sensitivities, it was incumbent on the programme makers to ensure that due accuracy was achieved.

The Committee concluded that it had not been duly accurate in this item to describe those who fought against Charles Stuart at Culloden as “English”, given the large number of Scots who fought among the Hanoverian forces.

Impartiality

The Committee noted that in addition to the accuracy points, the complainant had alleged that the inclusion of an introduction setting the match in the historical political context of the Union was inconsistent with the BBC's reasons for not including the First Minister in the programme.

The Committee had already satisfied itself that it was appropriate for the programme to set the match in the context of the historical rivalry between Scotland and England, but that the current political circumstances meant that a high degree of accuracy was required in doing so. The Committee, as set out above, had found that the item had not been duly accurate in describing the Duke of Cumberland's army as English. The Committee noted the BBC's acknowledgment that the Duke of Cumberland's army included some regiments which were not English. However, the Committee noted, the BBC had concluded that, given the brief nature of the summary provided in the introduction, it was duly accurate to describe this army as English. While the Committee did not agree with this conclusion, for the reasons given above, the Committee did not consider that it had seen evidence to show that the BBC had set out to mislead its audience on this point.

Having already agreed that it was a legitimate editorial choice to set the match in a historical political context, the Committee turned to the complainant's allegation that this was inconsistent with the decision not to include the First Minister in the programme.

The Committee considered that there was a difference between a film which took a light-hearted look at the historic relationship between Scotland and England, and the inclusion of a currently serving politician at a time of increased political sensitivity.

The Committee noted the earlier decision in June by the panel of the Complaints and Appeals Board of the Trust. The Panel had agreed that decisions relating to who to include in programmes is a decision about the direction of the BBC's editorial and creative output which is a matter for the Executive Board and one in which the Trust does not normally get involved. The Panel considered that it was a reasonable decision of the Chief Adviser, Politics that there was a risk to the impartiality of the BBC by the appearance of Mr Salmond and of no other leading Scottish politician in this programme even if current politics was not to be discussed. The omission of Mr Salmond did not, therefore, in the Panel's view, render the programme biased.

The Committee agreed that the decision to set the match in a historical political context, and the use of the filmed introduction by John Inverdale to do so, was a legitimate editorial decision as was the decision not to include Mr Salmond and, notwithstanding the failure to achieve due accuracy in one respect, the Impartiality Guidelines had not been breached.

With regard to the handling of the complaint, the Committee noted that this had been delayed substantially at Stage 3 by a misinterpretation of the complaint which had been carried through all stages of the process, from BBC Audience Services to the BBC Trust. The Committee considered that to some extent this could be explained by the fact that it had initially been miscategorised as a complaint about the decision not to include the First Minister in the Calcutta Cup coverage. However, the Committee noted that repeated attempts by the complainant to clarify the terms of his complaint had been missed. The Committee noted that this error had eventually been corrected and, other than the regrettable delay, it was satisfied that consideration of the complaint in the correct terms had not been prejudiced. Nevertheless, the Committee agreed that the handling of the

complaint had fallen below the standards that it would normally expect and it wished to apologise for the breach of the Guideline which it had upheld as well as for the problems the complainant had experienced in pursuing the matter.

Finding: Upheld in part.

One O'clock News, BBC Radio 2, 26 June 2012

1. Background

The 1pm news bulletin on Radio 2 on 26 June 2012 led with the news that South London Healthcare could be placed under the control of an administrator within weeks and that as many as five other NHS trusts were facing similar dire financial problems.

The complainant said it was biased and inaccurate to state that the NHS Trust's debts "...have become unsustainable largely as a result of contracts agreed under the Private Finance Initiative" (PFI).

2. The complaint

Stage 1

The complainant wrote to the BBC on 26 June 2012 noting how the 1pm news bulletin on Radio 2 stated that PFI "is the cause of the majority of the South London NHS Hospitals' Trust reason for going bankrupt".

The complainant said the report went on to say that the Conservative Party supported this view, but the Labour Party did not, "so how can the BBC make that assertion, without even bothering to justify it? If this is not bias, then what is?"

The complainant said this news item was the latest in "a long line of similar anti-PFI statements by the BBC", some of which he had also complained about. If it were not for private funding, said the complainant, much recent public infrastructure would not have been built at all. He said he had yet to hear anyone on the BBC defending the principles of PFI.

The complainant said the reasons for NHS deficits are long and complex, and perhaps in part due to colossal pay increases awarded to doctors in 2008 by the Labour Party.

The complainant noted that annual PFI charges for South London Healthcare accounted for 14% of the Trust's total expenditure which was "quite a small percentage when you think that the hospitals are new, fully equipped with modern equipment, serviced and maintained".

BBC Audience Services responded on 4 July 2012 stating that the amalgamation of three hospitals into the new South London Healthcare Trust resulted in the inheritance of a large debt, mainly from the private finance initiative (PFI) that had been used for the buildings at Orpington and Woolwich.

The response from Audience Services said there were more complex factors behind the financial pressures facing some other Trusts, which had been explained across BBC News reporting.

A separate response from the Complaints Adviser for BBC News stated that while 14% may not seem a large figure it did appear that the PFI repayments are a major concern for South London Healthcare Trust.

The response referenced a background story published the same day on the BBC website and written by one of the BBC's Health Correspondents⁴. It looked in greater detail at the

⁴ <http://www.bbc.co.uk/news/health-18594046>

problems facing the Trust. The story included the following information:

“This year alone £61m in (PFI) charges and interest will have to be paid, nearly 15% of the trust’s turnover. And with the final payment not due until 2032, there is no light at the end of the tunnel. In recent years the trust has tried everything possible. It cut costs by £47m in 2010-11, but still posted a £40m deficit.”

The Complaints Adviser said:

“We believe therefore that it is reasonable and accurate to highlight the part played in the trust’s deficit by the PFI repayments. It is not an issue of bias but one of financial analysis; at other trusts with issues arising from PFI projects the factors involved may well be different.”

The Complaints Adviser said comments from the King’s Fund, also reported by the BBC supported how much PFI might be to blame for overall financial problems.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 13 August 2012. He said the article stated precisely the opposite of what the complaints adviser claimed:

“Some 22 Trusts, responsible for 60 hospitals, have told the Department of Health that PFI repayments are to blame for their financial woes and Mr Lansley said this was further evidence of Labour’s ‘enormous debt legacy’.”

But does his attack stack up?

The Department of Health and the consultants McKinsey have been examining the financial stability of these Trusts for several months and their work is ongoing...

...the Department of Health concede that PFI contracts are only one part of the problem these Trusts face.

John Appleby, chief economist at the King’s Fund, is not convinced PFI is the sole problem.

He told the Guardian, ‘When you look at individual hospitals there’s a complexity of problems they may have faced over the years: changes in the demographics where they are, changes in medical technology which means they have to change the way they provide services and haven’t, through to maybe poor management. To simply blame PFI, which is certainly how it came across to me, is simply misleading at best.’”

PFI costs, said the complainant, would have been anticipated, therefore the issue had to be lack of government funding.

The complainant made additional comments about the BBC’s coverage of the PFI issue in a previous interview on the *Today* programme which he said he had also complained about.

The ECU Complaints Director responded on 15 August 2012 informing the complainant that it would investigate his allegation that it was inaccurate to state that PFI contracts were the main reason why the South London Healthcare NHS Trust was facing administration.

The Complaints Director advised the complainant it was beyond the ECU's remit to investigate the broader concerns he raised about the manner in which the BBC reports on PFI investments. The Complaints Director said he could forward his comments to BBC News management for a response should he so wish.

The complainant responded saying he had noted the scope of the ECU investigation.

The ECU did not uphold the complaint when it published its finding on 10 September 2012. It acknowledged the evidence produced by the complainant but noted the comments he quoted from both the King's Fund and the former NHS Chief Executive were about the effects of PFI costs as a whole and did not relate specifically to South London Healthcare.

The Complaints Director noted a report published in October 2011 by the National Audit Office (NAO) which identified six NHS Trusts (including South London Healthcare). The NAO stated that the Trusts' scale of debt repayments, together with other financial problems, meant they were not viable.

The Complaints Director noted too an interview on the *Today* programme on 26 June 2012 in which Chris Ham of the King's Fund was asked about the causes of South London Healthcare's financial difficulties. He said:

"There are two causes in my view. One is the cost of these PFI hospitals which have been built in South London – the estimate is they are adding about £60 million a year to the running of these hospitals and that's about the same size as their deficit. But the more fundamental issue is that across London and in some other parts of the country we are still trying to run too many hospitals in relation to the funding we have available to pay for care."

The Complaints Director concluded:

"I appreciate that PFI contracts may not be such an important issue for other NHS Trusts but in the case of South London Healthcare, it does appear as though relevant experts regard it as a highly significant factor. I am therefore unable to conclude that the introduction to the news report was likely to be materially misleading. Listeners would have understood that its debts were unsustainable and 'contracts agreed under the private finance initiative' were a major contribution."

The complainant responded saying that the finding had failed to address staffing costs, which in his opinion were the main reason for the deficit.

The ECU Complaints Director accepted that staffing costs were the NHS Trust's single largest overhead. But he said that staffing costs could be managed and controlled to some degree and could adjust to changing economic circumstances, whereas PFI contracts were fixed for the duration of the contracts, one of which in the case of South London Healthcare runs until 2032.

While the ECU accepted that factors other than PFI contributed to South London Healthcare's financial difficulties, it said the introduction was not materially misleading.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 12 September 2012 attaching the final

correspondence he received from the ECU.

He made the following additional points:

- “The fact is the government has signed up to legally binding commitments and it should honour them. Media talk of being ‘saddled with debt’ is bias. It is a contract – it’s as simple as that.”
- At the end of the contracts the hospitals are no longer owned by the PFI consortia but are given over to the state. It is a long term purchase, not a rental.

The complainant raised the following point in relation to the accuracy and impartiality of this item:

- It was inaccurate and biased to state that PFI contracts were the main reason why the South London Healthcare NHS Trust was facing administration.

3. Applicable Editorial Standards

The following sections of the 2010 Editorial Guidelines are applicable:

Section 3 – Accuracy

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...

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.

Section 4 – Impartiality

4.2.2

News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument.

4.4.2

...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC’s impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.

4.4.7

When dealing with ‘controversial subjects’ we must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active. Opinion should be clearly distinguished from fact.

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 submission from the complainant.

The Committee noted the relevant content:

Headline:

"It's emerged that more health Trusts are in deep financial trouble..."

Introduction:

"The Government has warned that as many as five other NHS Trusts are facing dire financial problems similar to those at South London Healthcare, which could be placed under the control of a special administrator within weeks. Its debts have become unsustainable, largely as a result of contracts agreed under the Private Finance Initiative which allows NHS hospitals to be built by the commercial sector with trusts paying to use them. Ministers say it's too early to tell whether hospitals or services will close. Here's our Political Correspondent Norman Smith:

Reporter:

"The expectation is that within the next fortnight an administrator will be sent into the South London Trust in an effort to balance the books. But already the political blame game has begun. Ministers have accused the last Labour government of giving the go-ahead to unaffordable PFI schemes, including two new hospitals built at the South London Trust at a cost of more than two billion pounds. Labour says ministers are simply seeking to deflect attention from their own costly NHS reforms. The Health Minister Simon Burns said it was premature to talk about cuts to services in the South London Trust but already unions are warning that patient services are at risk."

The Committee noted how the complainant framed his allegation at Stage 1:

"The BBC said PFI is the cause of the majority of the South London NHS Hospitals' Trust reason for going bankrupt. In the same report, it then went on to say that the Conservative party supported this view, but that the Labour Party did not. So how can the BBC make that assertion, without even bothering to justify it? ...

The reasons for NHS deficits are long and complex, and perhaps at least in part due to colossal pay increases made to doctors in 2008 by the Labour Party."

The Committee noted that in subsequent correspondence the complainant asserted that the 14% of South London Healthcare Trust's (SLHT) budget which went on meeting PFI repayments could not be the main reason for the Trust's financial problems:

"14% of the total expenditure is actually quite a small percentage when you think that the hospitals are new, fully equipped with modern equipment, serviced and maintained."

The Committee noted the Editorial Complaints Unit's (ECU) finding that the introduction was not materially misleading: while other issues had contributed to SLHT's financial difficulties, both the King's Fund and the National Audit Office agree that PFI costs are a highly significant factor for South London Healthcare.

The Committee noted the ECU's view that while staffing costs may be the single largest overhead for SLHT, there were measures a "business" could take to manage them in the context of changing economic circumstances and that SLHT did not have the same flexibility with regard to servicing its PFI debt.

The Committee noted the response to this appeal by the Radio Newsroom Editor:

"On reflection, I think it would have been more accurate to say PFI played a significant part in the problems in South London, rather than saying it was "largely" down to PFI. However, I would strongly resist any notion that what we broadcast was materially misleading."

The Committee noted that various online dictionary definitions of the adverb "largely" reflect a range of meanings: from "to a great extent" to "primarily" or "mostly". The Committee also noted that the introduction explicitly did not say that PFI debts were the sole reason for SLHT's problems.

The Committee noted the interview with the Trust's Chief Executive, Dr Chris Streater, on the *Today* programme on Radio 4 earlier the same day in which he stated that SLHT's financial problems were caused by a variety of reasons, of which PFI was one.

The Committee noted that SLHT was one of the six Trusts identified in a National Audit Office (NAO) report from October 2011⁵ which was identified as:

"not viable ... because of the scale of their PFI payments alongside a variety of other financial problems. (p9)

The Committee noted too an additional comment in the NAO report that:

"PFI contracts limit the flexibility some trusts have to reconfigure their services and they have associated long-term financial commitments"

The Committee noted a 2007 report by academics at the Centre for International Public Health Policy at Edinburgh University which examined the cost of PFI and its impact on health services in England, and the conclusion it drew in relation to SLHT:

"In South East London, for example, local health officials have highlighted PFI costs as the main contributor to deficits among the area's trusts. In particular, Bromley and the Queen Elizabeth Hospital trusts, which have 'whole hospital' PFIs in operation, are significantly under-funded for their PFI costs.

This led to aggregate debts of £180 million by the end of 2006/07. Because of the high cost and intractable nature of PFI contracts, local health officials are considering focusing cuts on trusts with cheaper public, rather than expensive PFI assets.

While PFI appears to be a major cause of deficits and associated service cuts among trusts, its inflexible nature means that plans for reductions to service capacity are affecting health economies more widely."

The Committee noted an article in the specialist Health Services Journal (HSJ) which was published in October 2012, after the report which is the subject of this complaint was broadcast. The Committee noted that the report referred to data that would have been

⁵ http://www.nao.org.uk/publications/1012/foundation_trusts.aspx

available in June 2012. The HSJ report said that PFI costs account for a third of SLHT's debt, with the other two thirds comprising of inefficiencies and lack of full reimbursement from the government for some of the services it offers. The article concluded:

"While PFI appears to be a major cause of deficits and associated service cuts among trusts, its inflexible nature means that plans for reductions to service capacity are affecting health economies more widely."

The Committee noted the complainant's assertion that the BBC should have justified the statement in the introduction to the news item that PFI debts were largely responsible for the SLHT's unsustainable debts, given the matter was one of contention:

"(the report) went on to say that the Conservative Party supported this view, but the Labour Party did not, "so how can the BBC make that assertion, without even bothering to justify it?"

The Committee noted that the news report which is the subject of this complaint stated that this was a controversial issue and set out the position of the respective parties:

"But already the political blame game has begun. Ministers have accused the last Labour government of giving the go-ahead to unaffordable PFI schemes, including two new hospitals built at the South London trust at a cost of more than two billion pounds. Labour says ministers are simply seeking to deflect attention from their own costly NHS reforms. The Health Minister Simon Burns said it was premature to talk about cuts to services in the South London trust but already unions are warning that patient services are at risk."

The Committee took the view that there would be no requirement to justify the statement in the introduction if the content was duly accurate, regardless of whether it was also the view of one or more political parties.

Whilst the Committee noted the evidence, that PFI costs at South London Healthcare do not account for the majority of the Trust's £61m deficit in monetary terms, the Committee agreed that this was not the determining factor in assessing whether the introduction was duly accurate. In this respect the Committee noted that, in accordance with the requirements of the Editorial Guidelines, due accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content. The Committee also took into account the likely audience expectation for this piece and any signposting that may influence that expectation.

The Committee considered that the word "largely" does not have to relate to the size of the debt but rather to the significance of PFI costs to SLHT's financial viability. In the context within which it was used in the introduction to the bulletin, the Committee agreed that "largely" could be interpreted as meaning "to a large extent". The Committee agreed with the ECU and others that it is the inflexible and fixed nature of PFI costs that make them so significant in the budget of SLHT. The Committee noted that, whilst the news item did not detail any of the other reasons for the SLHT's financial problems, it did not state that PFI debts were the sole reason.

The Committee therefore concluded that while it may have been preferable to have said PFI costs were a significant factor, the wording that was used did not breach the Guideline requirement for clear precise language on the basis that the word "largely" could be interpreted in the context of the bulletin to mean "to a large extent". For the same reasons the Committee did not consider that the bulletin was materially misleading. The bulletin was therefore duly accurate.

In relation to impartiality, the Committee agreed that it had not seen any evidence to suggest that this bulletin had breached the requirements of due impartiality. In particular, the bulletin made no reference to the phrase "saddled with debt". In the Committee's view, the use of the word "largely" in the bulletin was therefore duly impartial.

Finding: Not upheld.

From Our Own Correspondent, BBC Radio 4, 5 November 2011

1. Background

The BBC website describes this Radio 4 series in the following way:

“For over 50 years, From Our Own Correspondent (FooC) has been one of BBC Radio’s flagship programmes. Every week correspondents from around the world report on the stories behind the headlines, often bringing a personal perspective to them.”

Each programme is 30 minutes long and reports are introduced by Kate Adie. This programme included reports from Greece, Washington, Jerusalem, Vladivostok and France. This item was about the new Jerusalem tram.

2. The complaint

The complainant felt that this item on the new Jerusalem tram implied, especially by the use of the word “capture”, that the whole of Jerusalem is in Israeli hands purely by conquest and not because West Jerusalem at least was inhabited by Jews before 1948.

Stage 1

The complainant wrote to the BBC on 7 November 2011 about the *From Our Own Correspondent* report by Matthew Teller which said:

“The western part of Jerusalem, captured by Israel in 1948, is quite different in atmosphere, culture, language, facilities and ambience from most of the eastern part of the city. That was under Jordanian rule from 1948 until 1967 – when it, too, was captured by Israel.”

The complainant said this was inaccurate and gave the impression that Jerusalem was an Arab city, captured in stages by the Israelis.

The BBC replied on 23 December 2011. After apologising for the delay, the email went on to reject the complaint as it said the piece was neither untrue nor misleading.

On 3 January 2012 the complainant responded saying that the grounds for the complaint’s dismissal were irrelevant. He concluded:

“In any event whatever the UN wanted it is simply factually inaccurate to say that the western part of Jerusalem was captured by Israel in 1948. They were already there when the British left.”

BBC Audience Services responded on 6 February 2012. In rejecting the complaint, the response provided some of the historical arguments and substantively concluded:

“International law recognises the de facto control of Israel of West Jerusalem but not sovereignty.”

Stage 2

The complainant wrote to the Editorial Complaints Unit on 8 February 2012. He reiterated his complaint that the piece was wrong and misleading. He cited an article by the

Committee for Accuracy in Middle East Reporting in America (CAMERA) in support.

The ECU responded on 22 February 2012. It said it intended to look at the complaint about the "capture" of the western part of Jerusalem in 1948 under the Accuracy guideline.

The ECU responded substantively on 23 March 2012. The complaint was not upheld.

The letter said that, although there had been a very sizeable Jewish population in Jerusalem at that time, there had been military action in 1948 which meant the word "capture" was not inappropriate. In support, the letter cited a CAMERA report which mentioned: "...Israeli forces managed to capture some suburbs and villages from the Arabs".

Stage 3

The complainant argued that the words "The western part of Jerusalem, captured by Israel in 1948, is quite different ... from most of the eastern part of the city. That was under Jordanian rule from 1948 until 1967 – when it, too, was captured by Israel" gave the false impression that Jerusalem as a whole is in Israeli hands purely by conquest.

He argued it was deliberately misleading both with regard to Jerusalem as a whole and with regards to West Jerusalem even if a small part of it was captured by Israel.

He said that it suggested that the Jews were not the largest ethnic group in Jerusalem for a very long time before 1948 until today whereas Jews have been the largest ethnic group in Jerusalem for hundreds of years and have been the majority in Jerusalem since the middle of the nineteenth century.

He argued that the Western part of Jerusalem was founded by Jews in 1860. When Britain left Palestine in 1948 the Jews were the overwhelming majority in West Jerusalem. He accepted that in 1948 the Arabs laid siege to West Jerusalem, and in the battle to break that siege Israeli forces did manage to capture suburbs and villages from the Arabs, just as the (Jordanian) Arab Legion managed to capture the Jewish Quarter of Jerusalem and some suburbs and villages from the Jews. But he said the overwhelming majority of West Jerusalem remained in Jewish hands throughout 1948.

3. Applicable Editorial Standards

The following sections of the BBC's Editorial Guidelines are applicable to this case:

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.

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.

4. The Committee's decision

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

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

Regarding the complainant's allegation that it was inaccurate to use the word "captured" in this context, the Committee considered whether the Accuracy guideline had been breached. In particular the Committee considered whether the BBC had demonstrated that the content was well sourced, based on sound evidence and presented in clear, precise language.

Context

The Committee noted that the political geography of Jerusalem is undoubtedly complicated, as the piece in question makes clear; and it has been the focus for settlement, conflict and invasion for millennia.

The Committee noted that neighbourhoods are small and the matrix of settlement which includes Jewish Israelis, Christian Palestinians, Armenians and Muslim Palestinians is complex. More recent incomers include secular Russians and American ultra-orthodox Jews.

The Committee noted that the debate about how many of which population lived precisely where at the end of the mandate has been fraught, that there was a British Survey of Palestine in 1946 but it has been widely critiqued for inaccuracy and that the only previous censuses conducted during the Mandate were in 1922 and 1931. The Committee noted that by 1948, the only consensus seems to be that these were wholly out of date – if they had ever been particularly accurate.

Allegation

The Committee noted that the allegation is that it was inaccurate to use the word "captured" about West Jerusalem as this was already a Jewish area, which would welcome Israeli forces, and the implication of the word is that the area was not predominantly Jewish at the time.

BBC response

The Committee noted that at an earlier stage of the complaint, the programme makers asked for advice from the BBC's Senior Editorial Adviser on the use of the word "captured" in this context. He advised:

"I think it is better than 'conquered' and fine in itself ... Jerusalem – whatever the interpretation of the historical background by either side – was and still is held by the UN to be an international city both at the time of creation and today. When the state of Israel was established, the UN wanted Jerusalem, as this international

city, to be administered by the UN. But this plan could not be implemented: immediately after the UN resolution partitioning Palestine in 1947 (Resolution 181), Israel occupied West Jerusalem and Jordan occupied East Jerusalem (including the Old City).

I would therefore regard 'captured' as an acceptable synonym for 'occupied'."

The Committee noted that when the BBC's Senior Editorial Adviser was asked specifically about the relation of "captured" to the largely Jewish West Jerusalem, the adviser responded:

"It's nothing to do with whether or not West Jerusalem was already largely inhabited by Jews.

To recap: when the state of Israel was established, the UN wanted Jerusalem to be an international city, to be administered by the UN. The UN resolution partitioning Palestine in 1947 (Resolution 181) decreed that Jerusalem would be in an international zone. Broadly, the Jewish state would receive the coastal plain, the Arab state would receive the Western Galilee. The 'Corpus Separatum' included Jerusalem, Bethlehem, and the surrounding areas. This plan was not implemented because war between Jews and Palestinian Arabs broke out in 1948 as the British mandate over Palestine came to an end.

As soon as Israel declared its statehood the forces of Syria, Egypt, Jordan, Lebanon, Saudi Arabia and Iraq invaded with Egypt and Jordan undertaking most of the fighting. Israel defeated the armies and captured land that was originally allocated to the Palestinian Arabs in the 1947 plan. It occupied West Jerusalem and Jordan occupied East Jerusalem (including the Old City). In 1949 an armistice agreement was signed and in 1950 Jordan formally annexed the area of pre-1947 Palestine that had not been captured by the Israelis (i.e. the West Bank and East Jerusalem).

The UN does not recognise the de jure validity of the Israel/Jordan Armistice Agreement and still maintains its 1947 position that Jerusalem is an international city."

Investigation

The Committee noted a number of texts that had been examined by its Independent Editorial Adviser to try to obtain some guidance as to whether the implications that the complainant sees in the use of the word "captured" are shared by others.

The Committee noted a dictionary definition of the word capture:

tr.v.

1. To take captive, as by force or craft; seize.
2. To gain possession or control of, as in a game or contest: capture the queen in chess;
captured the liberal vote.
3. To attract and hold: tales of adventure that capture the imagination.
4. To succeed in preserving in lasting form: capture a likeness in a painting.

n.

1. The act of catching, taking, or winning, as by force or skill.
2. One that has been seized, caught, or won; a catch or prize.

The Committee noted that Simon Sebag Montefiore's book *Jerusalem, The Biography* says on page 478:

"His Arab Legion advanced cautiously through the Judean hills towards Jerusalem, where the irregular Arab Liberation Army attacked the Jewish suburbs. By nightfall on 16 May, the Hagannah [Jewish militia] had captured the Mea Shearim police station and Sheikh Jarrah to the north and all the New City south of the walls as well as the former British strongholds in the centre of the Russian Compound and the YMCA.

'We have conquered almost all of Jerusalem, apart from the Augusta Victoria and the Old City' claimed an overwhelmed Ben-Gurion."

The Committee noted that the Mea Shearim police station was in a Jewish area then. It was founded in 1874 as a Jewish area outside the Old City. It is now at the heart of one of the most orthodox parts of Jerusalem. Augusta Victoria was a Lutheran site near Mount Scopus.

The Committee noted that Ben Gurion is quoted as saying "conquered" of "almost all of Jerusalem" which must have included several largely Jewish neighbourhoods. Trustees noted the use of the words "captured" and "conquered".

The Committee noted that the Knesset's (Israel's parliament) official website also uses "captured" without seeming to differentiate the populations:

"The Hagana captured the entire city of Tiberias in which there were besieged Jews in the old city (April 18), Haifa (April 22), the area connecting Tel-Aviv with her outlying neighborhoods, the Jerusalem neighborhoods Katamon and Shech Jarach (Shech Jarach was later vacated as a result of an ultimatum by the British), the Western Galilee, the entire city of Safed (the Jewish quarter was under siege)."

The Committee also noted that the Jewish Virtual Library, in "The Battle for Jerusalem in the War of Independence" says:

"Upon the British departure from the city at the conclusion of the Mandate, Haganah forces captured various neighborhoods and centers in the new city."

And that some of those would have been Jewish areas.

The Committee considered whether the complainant's interpretation of the use of the word "captured" carried the weight and implications that he alleged, or whether, as the BBC contended, it merely suggests that there was military action without raising any particular question about the population over and around which fighting occurred.

The Committee took into account the complainant's comments that several of the references cited above were either in translation, in the speaker's third language or in American English.

The Committee decided that, in this context, exactly who was living in the area was of less importance to the use of the word "captured" than whether there had been fighting over this territory and the question was not one of nationality but of sovereignty. The Committee concluded that "captured" could mean occupying without conflict but that in this case there had been fighting and not just a peaceful occupation of the area described, which rendered the use of the word "captured" duly accurate.

The Committee would have preferred the report not to have used the same word "captured" to refer both to the events in 1948 and to those in 1967 in East Jerusalem but concluded that, in the context of this item on the tram and the areas it traverses, it was duly accurate to refer to the western part of Jerusalem as having been "captured by Israel in 1948". It also agreed that taking the section as a whole it did not consider that the references to the western part of Jerusalem or Jerusalem as a whole had been other than duly accurate.

The Committee, having decided this was duly accurate, did not accept that the wording was knowingly misleading.

Finding: Not upheld.

Rejected Appeals

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

Your Call, Radio 5Live, 15 March 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 Editorial Complaints Unit not to uphold his complaint that Nicky Campbell, the presenter of *Your Call*, had not conducted a discussion about animal testing with due accuracy and impartiality.

The complainant said that the ECU's decision was illogical as it cited government and big business support for animal testing. The complainant said that what the government or certain biomedical bodies claimed was irrelevant because the government could not be trusted and there were scientific groups which opposed animal testing. The complainant also said that big business and people's careers profited from animal experimentation. The complainant added that animal testing was ineffective as humans differed from animals, and he provided the websites of organisations which opposed animal testing on scientific grounds.

The complainant said that Nicky Campbell clearly stated as a fact, at least twice, that callers had benefited from animal experiments. He said that the BBC's initial response to him (in which they argued that Nicky Campbell had asked this as a question rather than stating it as a fact) still appeared to support the view that animal testing scientifically worked. The complainant added that the alleged inaccuracy directly affected him as he had leafleted thousands of people about what he described as the "dodgy science behind animal testing". He therefore viewed the programme as deeming him a liar.

The complainant wrote again following receipt of a copy of the programme from the Trust Unit. He maintained that, although there were opposing views on the programme, the presenter did not remain impartial. He also provided extracts from qualified medical experts which he said put forward evidence that the discovery of insulin, contrary to the presenter's view, had nothing whatsoever to do with animals.

The complainant wrote several more times reiterating that animal testing did not work as humans differed from animals. He quoted from the Safer Medicines website which discussed safety and efficacy in the context of the drugs Thalidomide and Vioxx, and he listed several reasons why he held the view that animal testing was not useful.

The complainant said that the Vioxx tragedy could have been prevented by proper human testing and that animal testing should be properly evaluated.

The complainant also added 11 points which referred to specific parts of the programme which, in his view, showed inaccuracy and bias in favour of animal testing:

1. By saying in the introduction before calls were taken "Is there another way to develop the best medicines we can to battle the likes of cancer or dementia?" Nicky Campbell implied that animal testing was a valid method of biomedical research for human health.
2. By then immediately saying "Or is it morally wrong for one species to benefit by harming another?" he was stating that humans benefited from animal testing.
3. The presenter made the statement "Thanks to the drugs that were tested in mice" to Cathy from Safer Medicines Trust. This was just after he heard from Peter who claimed that the use of the mouse model was helping develop drugs for his rare cancer.
4. The presenter could be heard saying "well" (as if he was in the right and that there have been "great clinical advances on Parkinson's utilising primates") after Cathy said "well I have to say that isn't true..."
5. Mr Campbell said "what about compassion for Chris [a caller who has Parkinson's]" implying that the only way the illness which Chris mentioned could be helped was through animal testing.
6. The presenter stated "There are many triumphs too though aren't there ... because the rodent genome is not that different from the human counterpart". This implied that the rodent model could help humans.
7. The presenter stated "There are many triumphs too", as if to say animal testing had achieved results.
8. The presenter said "in this country more so than in others" referring to the way animals and humans were treated. This was in reference to the caller Gill's claim that animals were treated with great respect.
9. The presenter said to Vanda from Hull "Hello Vanda – I know you've benefitted from experiments because you've been on insulin for a long time."
10. The presenter said "But you know the mice genes are remarkably similar to our own in the way they're structured" as if to say mouse tests benefited humans.
11. The presenter said "... that mice are the go-to option for what is seen by most people as acceptable and yet is still clinically useful in the similarity of the genome".

The BBC Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards.

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards 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 noted that the transcript demonstrated that the presenter only mentioned animal experiments "benefiting" one caller. This was right at the end of the programme, more than 50 minutes in, by which time the Head of Editorial Standards noted that many of the arguments had been explored.

The transcript of how Nicky Campbell introduced this caller read:

“...Vanda in Huddersfield – Hello Vanda – I know you’ve benefited from experiments because you’ve been on insulin for a long time, um would you be able and I think there was a lot of experiments done on dogs. Um would you be able have been able to conduct those experiments yourself?”

The caller then discussed her case and history and talked about how much of a dog lover she was – though not fond of cats. She was in favour of animal experiments in spite of her affection for animals. Nicky Campbell responded:

“...the cat debate is a different one ... but you are an animal lover but you still say look I’ve benefited.”

Therefore, while Nicky Campbell did use the word “benefited” twice during the phone-in, both times were in relation to a single caller and incident, and in the context of Nicky trying to elicit another side of the argument from the caller in order to further the debate. The Head of Editorial Standards considered that the second instance was a clear attribution of the views of the caller herself. At no other point in the programme did the presenter use such terms.

The Head of Editorial Standards noted that the complainant had provided information in support of his argument that the discovery of insulin was not connected with animal testing. She also noted the evidence put forward by the Editorial Complaints Unit that there was a consensus within the scientific community that the use of animals for biomedical research had value, and this was acknowledged and accepted by many governments and policy-makers. The Head of Editorial Standards therefore did not believe that the information the complainant had provided negated the point regarding the use of animals for more general biomedical research. The Head of Editorial Standards also noted that the point was made several times in the programme that medical breakthroughs were not always a result of animal testing.

At the beginning of the programme, Nicky Campbell spoke with a director of the charity Safer Medicines Trust who made the point that “...all of the research based on mice and other animals has not led to any cures or treatments for human cancer and very often it misleads scientists and actually hinders research” and that “studies of [human] patients ... is where breakthroughs and treatments are going to come from”, and cited Alzheimer’s and Parkinson’s as examples of these. Another caller, Kate, made the point that insofar as drugs testing was concerned animal testing was only 40% effective and “testing only really happens when the drugs are given to human beings”. Another caller, Roger, also highlighted the differences between humans and animals and questioned the value of animal research for that reason.

In this overall context, the Head of Editorial Standards considered that Trustees would agree that it was not misleading for the presenter to make this statement and therefore they would not conclude that the Accuracy Guidelines were breached. She also considered that Trustees would conclude that due weight was given to competing viewpoints in relation to this issue and that the item complied with the BBC’s Guidelines on due impartiality.

Turning to supplementary points made by the complainant, the Head of Editorial Standards did not believe it was her role to enter into a debate into the usefulness or otherwise of experiments on animals. Her role was to look at the specifics of the programme as broadcast against the editorial guidelines. The Head of Editorial Standards responded to the numbered points as follows:

1. By saying in the introduction before calls were taken "Is there another way to develop the best medicines we can to battle the likes of cancer or dementia?" Nicky Campbell implied that animal testing was a valid method of biomedical research for human health.

The Head of Editorial Standards did not believe Trustees would agree that there was any implication about the merits of animal testing in this comment.

2. By then immediately saying "Or is it morally wrong for one species to benefit by harming another?" he was stating that humans benefited from animal testing.

This was posing a legitimate question about morality and speciesism. The Head of Editorial Standards believed Trustees would find there was no requirement under the Impartiality guideline for the presenter to examine, in making this remark, the extent to which humans actually benefited from experiments.

3. The presenter made the statement "Thanks to the drugs that were tested in mice" to Cathy from Safer Medicines Trust. This was just after he heard from Peter who claimed that the use of the mouse model was helping develop drugs for his rare cancer.

These remarks came as part of a lengthy exchange with Cathy from the Safer Medicines Trust. She made the point about curing cancer in mice not men at some length. The Head of Editorial Standards believed there would be very little prospect of success at the ESC were the Committee to be asked to find that an interviewer putting an opposing view to a very well-informed and specialist guest, was breaching the Impartiality guidelines or was himself lacking in impartiality.

4. The presenter could be heard saying "well" (as if he was in the right and that there have been "great clinical advances on Parkinson's utilising primates") after Cathy said "well I have to say that isn't true..."

The Head of Editorial Standards could not see that the ESC would be likely to uphold the intonation of the presenter saying "well" as a breach of the guidelines.

5. Mr Campbell said "what about compassion for Chris [a caller who has Parkinson's]" implying that the only way the illness which Chris mentioned could be helped was through animal testing.

The Head of Editorial Standards did not think there was a reasonable prospect of the ESC interpreting this exchange in the way the complainant suggested. Having compassion for Chris might involve a variety of techniques and topics – it was just that animal experiments was the one under discussion here.

6. The presenter stated "There are many triumphs too though aren't there ... because the rodent genome is not that different from the human counterpart". This implied that the rodent model could help humans.

The presenter was making a statement to encourage comment from Professor Lovell Badge, who conducted experiments, having just heard from Kate, who would not have any done at all. He was introducing a scientist and sounded as if he was introducing some scientific concepts to bring in the professor. The Head of Editorial Standards believed there would be no reasonable prospect of the ESC finding that this was not duly impartial.

7. The presenter stated "There are many triumphs too", as if to say animal testing had achieved results.

This was the same point as point 6 above.

8. The presenter said "in this country more so than in others" referring to the way animals and humans were treated. This was in reference to the caller Gill's claim that animals were treated with great respect.

The Head of Editorial Standards understood that animals in laboratories in the UK were treated better than those in laboratories elsewhere (this was not to enter an argument about whether they should be in laboratories in the first place). She had been advised that the new European Directive on animal experimentation, currently going through transposition into law, was very largely based on UK standards for housing, husbandry and welfare which were generally conceded to be high compared to most of Europe, America and the Far East. The UK stood alone in having the NC3Rs financed by government, research grant givers and pharmaceuticals which promoted Refinement, Replacement and Reduction of the use of animals. The presenter was stating a fact, not offering an opinion. He was comparing the treatment of laboratory animals here with the treatment of those abroad. The Head of Editorial Standards believed there was no reasonable prospect that the ESC could find that a breach of accuracy or impartiality.

9. The presenter said to Vanda from Hull "Hello Vanda – I know you've benefited from experiments because you've been on insulin for a long time."

Although the presenter did say he knew Vanda had "benefited" from experiments, the Head of Editorial Standards noted that the contrary opinion – that animal experiments did not benefit humans – had been put clearly, several times. Both PETA and the Campaign for Safer Medicines, as well as callers, expressed anti-experimentation opinions including that these experiments were of no value.

10. The presenter said "But you know the mice genes are remarkably similar to our own in the way they're structured" as if to say mouse tests benefited humans.

This point was addressed at point 6 above. The presenter did not say that "benefit" to humans was certain. Given that, the Head of Editorial Standards believed that there was no reasonable prospect of the ESC finding this statement lacking in impartiality.

11. The presenter said "... that mice are the go-to option for what is seen by most people as acceptable and yet is still clinically useful in the similarity of the genome."

The presenter was undoubtedly correct in saying that mice were the "go-to option" in that a very high proportion of the experiments carried out on animals in this country were

indeed on rodents, mostly mice. Indeed, according to Home Office statistics, 78% of procedures (including breeding) on animals in the UK in 2011 were on rodents, 71% mice. The Head of Editorial Standards believed he was attributing the acceptability and not saying that he himself had any views. She believed there was no reasonable prospect of the ESC finding this in breach of the accuracy or impartiality guidelines.

The Head of Editorial Standards said that the presenter asked challenging questions of callers and experts alike during this phone-in. He asked whether people would be willing to do experiments themselves, he examined speciesism and the capture, import and use of primates, and was very probing about the treatment of dogs in laboratories. Given that, the Head of Editorial Standards did not think that the audience, listening with an open mind, would have any idea of where Nicky Campbell stood on animal experiments and she did not think there was any reasonable prospect of success were the ESC to consider the broader issues in the complaint.

The Head of Editorial Standards concurred with the ECU's citing of a number of authorities on animal testing and its conclusion that, while there was debate, there was certainly no agreement that there was no benefit to humans from animal experiments, which was the complainant's position.

Finally, the Head of Editorial Standards considered the allegation that the programme effectively deemed the complainant to be a liar. She believed that there was no evidence for this. She explained that the complainant was not named personally in the programme and did not, in her view, pass the threshold for making a fairness complaint on this issue.

For these reasons, the Head of Editorial Standards did not propose to proceed with the complaint.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated that animal testing could not work because animals were biologically different from humans, and said the programme was inaccurate and biased. He added that the torture and killing of animals should be regarded by the BBC Trust as an issue of substance in his 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 on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the relevant part of the programme in question and some further correspondence with the complainant on the point about insulin.

The Committee noted the complainant's very strongly held views on the subject of animal welfare and animal testing. The Committee noted that the complainant had cited evidence which he said showed that animal testing provided no benefit to humans. The Committee was mindful that its role was not to determine whether or not animal testing was valid; however, it considered that, although there was clearly disagreement within the scientific community and society in general about the value of animal testing, it was certainly not conclusive that animal testing provided no benefit and that there was evidence and views to the contrary. The Committee agreed, therefore, that it was appropriate when covering this subject to include the view that animal testing has been beneficial to humans. The Committee noted that the complainant had alleged that, in representing this view, the

presenter of the show had been putting forward his own opinion. The Committee did not agree that the evidence supported this allegation, and it considered that it was an acceptable technique to put a point of view (not necessarily that held by the presenter) to callers in order to draw out their views on a particular subject. The Committee did not agree that this constituted evidence of a breach of the Impartiality Guidelines.

The Committee noted that on one specific point, the development of insulin, the complainant said that the presenter was inaccurate in stating that a caller had benefited directly from animal testing. The Committee noted the complainant's argument that animal testing had not been a key part of the discovery of insulin. On this point, the Committee noted that the Nobel Prize website⁶ explains that in 1923 the Nobel Committee decided to award the Nobel Prize in Physiology or Medicine to two scientists, Frederick Banting and John Macleod, "for the discovery of insulin". The Committee noted the website's description of the steps that led to the discovery of insulin, which started with experiments on dogs and went on to cattle before experiments on humans.

The Committee accepted that there are those who do not consider that animal research was critical – or indeed at all helpful – even in the first use of insulin to help treat diabetes. However, given the weight of evidence demonstrating that dogs and other animals were in fact used in various experiments and tests in the development of insulin, it is difficult to maintain that the presenter breached the Editorial Guidelines on Accuracy in his remark about the diabetic caller benefiting from animal testing. The Committee agreed that this aspect of the complaint did not have a reasonable prospect of being upheld on appeal.

Finally, the Committee noted that the complainant had argued that the subject of animal welfare should constitute a matter of substance for the BBC Trust. The Committee wished to clarify that the "matter of substance" test was not related to the subject of the complaint but the likelihood that the Editorial Guidelines had been breached. In this case, while the subject was one which many people have strong views on, there was no reasonable prospect of success for an appeal on the grounds that the Editorial Guidelines had been breached by this programme.

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

⁶ <http://www.nobelprize.org/educational/medicine/insulin/discovery-insulin.html>

“Paralysed Rats ‘Learn to Walk’”, BBC Red Button, 6 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 to appeal against the decision of the Editorial Complaints Unit not to uphold his complaint that a short article on the BBC’s Red Button service, which reported a finding in *Science* magazine about mobility in paralysed rats, was biased and should have reflected some scepticism about the validity of animal testing. He said that there was a discrepancy between this short article and a longer article about the same magazine report on the BBC’s website. The complainant said this discrepancy was an indication of bias in favour of animal experimentation.

The complainant also argued that the ECU did not take into account all of the relevant editorial guidelines when considering the complaint. The ECU had referred to the guidelines relating to impartiality:

“Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead, we should seek to achieve ‘due weight’.”

The complainant argued that the second paragraph of that guideline was also salient:

“Nevertheless, the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC’s impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.”

The complainant said that people reading the Red Button article would have understood it to mean that animal testing (in this case using rats) would help humans. He added that even in such a short article, there should have been space to add a sentence saying that animal testing was not scientifically valid or that, as humans differed from animals, the results of the rat tests could not be applied to humans.

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 appeal concerned the text of a short article on the BBC’s Red Button service.

“Paralysed rats have been able to walk again after their spinal cords were bathed in chemicals and zapped with electricity, scientists have shown.

An injury to the spinal cord stops the brain controlling the body.

The study, in the journal *Science*, showed injured rats could even learn to sprint with spinal stimulation.

Experts said it was an 'exceptional study' and that restoring function after paralysis 'can no longer be dismissed as a pipedream'."

The Senior Editorial Strategy Adviser noted that this text made up the first four paragraphs of a longer article which was published on the BBC website.

The Senior Editorial Strategy Adviser agreed that the appeal engaged the entirety of Impartiality Guideline 4.4.2, cited above. However, she did not agree that in the context of the article which appeared on the BBC's Red Button service, the BBC had omitted an important perspective so as to jeopardise perceptions of its impartiality. This was because not every article was expected to address all concerns about a given issue. She noted that the limited scope of the Red Button article was addressed by the ECU, which said that the article reported the findings of a specific study and was not required to consider wider issues such as the efficacy of, or justification for, animal testing. The Senior Editorial Strategy Adviser agreed with this reasoning.

The Senior Editorial Strategy Adviser also noted that the Red Button article did not make any claims for progress in human patients; instead it said that the possibility of restoring function "can no longer be dismissed as a pipedream". In her view, this meant that, prior to this research, any suggestion that someone who was paralysed might regain mobility was no more than fantasy; this research raised the possibility that recovering mobility might be within the realms of what was possible. Certainly the article did not promise a breakthrough in medical treatment for humans, nor did it give any indication of when any such breakthrough might occur. The ECU had said that the final comment, that restoring function after paralysis was no longer a pipedream, would tend to give the impression that any potential cure was still a long way from reality. The Senior Editorial Strategy Adviser agreed with that analysis.

The complainant had also argued that the shorter article differed from the longer version on the BBC's website in a way that was biased. Having read the longer article, and also the blog by the BBC's medical correspondent that was linked to it, the Senior Editorial Strategy Adviser did not believe the appeal had a reasonable prospect of success on this point. She noted that the longer article explored some of the difficulties that existed in this area of medical research. The article quoted Dr Mark Bacon, the director of research at the charity Spinal Research:

"This is a robust demonstration that medical research is moving in the right direction and restoring function after paralysis can no longer be dismissed as a pipedream.

"For all its complexity, the important message here may be that our standard approach to rehab may not be making the most of the potential to restore function if we don't provide appropriate 'rewarding' feedback to every part of the nervous system, including the brain."

However, Dr Bacon warned that "real world" injuries might be more complicated, with less tissue for new nerves to grow through.

The Senior Editorial Strategy Adviser said that, while this was a more sophisticated response than was captured in the four paragraphs of the Red Button report, the two articles were entirely consistent with each other. It was not incumbent on the BBC to summarise the ethical arguments surrounding animal testing each time it was referred to in its news and science reporting. In this instance, the Senior Editorial Strategy Adviser said the Red Button article gave a reasonable, if brief, summary of the report in the magazine *Science*. She said that broader issues were explored in the article on the

website, including queries over whether it would be possible to replicate the success that had been seen in rats in humans suffering from paralysis. The website report also carried a link through to the BBC medical correspondent's blog in which he reflected about how complicated this kind of research was – and how distant any progress might be. The accompanying blog balanced the very optimistic comments from the research team with more cautious responses from other scientists. Some of these responses suggested that the injuries suffered by paralysed people were very different from those inflicted on the rats. The Senior Editorial Strategy Adviser noted that the blog concluded on a very cautious note: "There are research teams worldwide trying to find ways of curing spinal cord injuries. But until there are successful trials involving several patients, scientists and journalists need to be careful about giving false hope to patients living with paralysis."

For these reasons, the Senior Editorial Strategy Adviser did not consider there was evidence to conclude that the Red Button report was in breach of the Impartiality Guidelines and, therefore, she did not think the appeal had a reasonable prospect of success on this point.

Referring to the section of the Impartiality Guidelines which stated that the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality, the Senior Editorial Strategy Adviser repeated that the BBC was not bound to reflect ethical dilemmas surrounding animal testing each time it reported on scientific developments in this area. The decision not to address these wider issues was, in her view, entirely reasonable in the context of the limitations of a Red Button article. Further, given the breadth of opinion found in the online report and in the accompanying blog, an appropriate range of views was expressed in relation to this scientific development. Therefore, she did not consider that the complaint of bias was likely to succeed on this point either and she did not intend to put it before the ESC.

The complainant requested that the Committee review the decision not to proceed with the appeal, saying he had nothing new to add.

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 short Red Button article and the corresponding article on the BBC website.

The Committee noted that the complainant felt strongly that testing on animals was not beneficial to humans, and his complaint about the Red Button article was based on his view that it was wrong for it to have reported on the *Science* story without putting forward the arguments against animal testing.

The Committee noted that the Red Button article was not about the benefits or otherwise of animal testing, but about the recent scientific research which appeared to show that recovery from paralysis was not beyond the realms of possibility. The Committee agreed that the Red Button article would not have left readers with the impression that a cure for human paralysis was inevitable, merely that it was no longer "a pipedream".

The Committee noted that the fuller version of the story which appeared on the BBC website, and the associated blog, went further to explain the difficulties in applying the results of this experiment to humans; however, the Committee did not agree with the complainant's assertion that the shorter Red Button article had failed to reflect this.

The Committee noted that the complainant had argued that the article should have

included an anti-animal experimentation viewpoint in order to achieve impartiality. The Committee noted that the complainant had based this argument on the section of the Impartiality Guidelines which states that:

“...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC’s impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.”

The Committee was mindful that this Guideline does not mean that certain perspectives can never be omitted. Indeed, it allows for the omission of perspectives where this is reasonable and carefully reached, with consistently applied editorial judgement.

The Committee noted the response that the complainant had had from the ECU, which said that the article reported the findings of a specific study and was not required to consider wider issues such as the efficacy of, or justification for, animal testing. The Committee agreed that, in this context, the Red Button article had not breached the requirements of due impartiality on the basis that the omission of an anti-animal testing perspective from an article which was not primarily about the issue of animal testing was reasonable and editorially justified.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the Red Button article had breached the Editorial Guidelines on impartiality in relation to this complaint.

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

BBC coverage of NATO during the 2011 Libyan conflict

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 Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint that the BBC's coverage of the Libyan conflict was biased towards NATO. He said that the battle for Sirte (a town where pro-Gaddafi fighters were besieged by rebels firing rocket launchers at civilians) was approached in a different way from the battle for Misrata earlier in the war (where anti-Gaddafi fighters were besieged in a similar fashion). The complainant argued that an alleged failure to ask certain questions about NATO's support for the rebels and its attitude to the fate of civilians in the battle for Sirte amounted to bias in favour of NATO.

In reply, the BBC Trust's Senior Editorial Strategy Adviser explained that, having taken advice from an independent adviser who had read the relevant correspondence and transcripts of the items in question, 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 had argued that the BBC failed to ask adequate questions about NATO's actions and how they endangered civilians, and failed to enquire whether NATO was protecting civilians who lived in areas that were held by forces in support of Gaddafi as keenly as it attempted to protect civilians in areas that housed rebel fighters.

However, she also noted that the Head of Editorial Compliance and Accountability had referred to a number of articles and broadcasts suggesting that NATO's actions were questioned and that questions were also raised about civilian deaths caused by NATO actions. The Head of Editorial Compliance and Accountability had cited an article by Matthew Price which aimed to clarify the extent to which NATO was simply protecting civilians, as per its mandate, or was acting specifically to support the opposition fighters. The questions he asked included:

- "Does Nato carry out air strikes in order not just to directly protect civilians, but also to demoralise Gaddafi forces and thus to protect civilians?"
- Does Nato believe its strikes against pro-Gaddafi forces have helped the rebels advance?
- Does Nato have advisers working on the ground with the rebels helping them with their tactics and strategy?"

These questions drew out the specific response from NATO that it was "not the opposition's air force".

Transcripts of the reports on the *Today* programme and *Newsnight* also suggested that the BBC did not avoid these issues. *Newsnight's* Diplomatic and Defence Editor showed footage of rebels firing multiple rocket launchers into Sirte and said that the possible effects on civilians would be very much like the effect of Colonel Gaddafi's attack on Benghazi (a rebel held town).

He said:

"Well, Sirte really is I think a fascinating frontier now... Let's have a look at some footage of a rebel flying column made up of pick-up trucks firing multiple rocket launchers ... I think we can say the possible effects of that on civilians would be much like the effect of Colonel Gaddafi's artillery on the civilians of Benghazi. The terms of UN Resolution 1973 are turned upside down at the gates of Sirte because many, perhaps most people in that town, support Colonel Gaddafi. They are not opposing him. They are not being threatened by his forces and they are now under bombardment from the rebels with coalition air support. Politically, very tricky."

On the *Today* programme of 1 September 2011 the presenter Justin Webb interviewed the Foreign Secretary, William Hague. He asked a series of questions specifically about NATO's role in protecting civilians in Sirte – by this point in the fighting the final battle for Sirte was imminent. First of all, he asked whether NATO should intervene to stop the rebels taking Sirte "...given that it's obvious that civilians will die in an armoured assault on a city?" He went on to say: "... this is potentially an armoured attack on a city. Obviously, civilians will be killed, won't they?" His following question continued the same line of thought. He reported that pro-Gaddafi fighters, willing to die for their cause, were among civilians and said: "... I'm just wondering whether from NATO's point of view there isn't some worry that you're actually going to be facilitating the deaths of civilians rather than protecting them?"

The Senior Editorial Strategy Adviser concluded that there was evidence to show robust questioning of NATO and of the Government's support for the NATO action. In her view, this did not suggest there was an underlying bias in favour of NATO or the Government. Therefore, she considered the complaint did not stand a reasonable prospect of success and she did not propose to put it before the Committee.

The complainant requested that the Committee review the decision not to proceed with the appeal. He said that the BBC's reporting of the Libyan war had changed the way he viewed BBC News and he would in future be much less willing to treat the BBC as the questioning and impartial corporation which he used to believe it to be. In his view, the Senior Editorial Strategy Adviser had presented no evidence that appropriate questioning took place during the battle for Sirte. He said that asking rare questions about a possible situation did not absolve a news organisation from asking those questions when the situation became a reality. He said that the argument put forward by the Senior Editorial Strategy Adviser was extraordinary and contradicted the requirements of the Impartiality Guidelines.

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 the delay that had occurred at Stage 1 of the process and agreed to apologise to the complainant for the failure to meet the target response time.

The Committee noted that the complainant had specifically criticised the BBC's coverage of the battle for Sirte while it was in progress (September and October 2011) and had not accepted the examples which had been provided to him from outside this period. The Committee noted, nevertheless, that the BBC and the Trust had provided examples from

earlier in 2011 showing that the BBC had put forward the very questions that the complainant had raised.

The Committee noted the relevant excerpt from the Editorial Guidelines on Impartiality which the complainant had cited:

“...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC’s impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.”

The Committee did not agree with the complainant that the lack of examples of BBC content broadcast during the period of the battle itself was evidence of a breach of this Guideline. The Committee noted in this respect that due impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across the BBC’s output as a whole or within a single programme. On this basis, the Committee did not consider that due impartiality in this context would require the range of perspectives to be covered in equal proportions during the period in which the BBC covered the battle for Sirte. In any event, given the examples from earlier in the Libyan conflict which had been provided to the complainant (including the *Today* interview of 1 September 2011), the Committee agreed that the BBC was clearly not avoiding the sort of questions which the complainant said should have been asked.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on impartiality in relation to this complaint.

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

The End of God? A Horizon Guide to Science and Religion, BBC Four, 10 November 2011

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 to appeal against the decision of the Editorial Complaints Unit not to uphold his complaint that *The End of God? A Horizon Guide to Science and Religion* uncritically presented only one side of the debate between creation and evolution. He argued that the programme misrepresented those who supported creationism by suggesting that their approach lacked scientific reasoning. He made the following points:

- The programme did not acknowledge that evolutionary theory was driven by an atheistic materialist mindset.
- Evolutionary theory was "bad science", which he felt should have been mentioned as an historical fact.
- The programme did not acknowledge that there was no convincing explanation for the existence of life other than the act of a creator.
- The programme created a straw-man of the "God of the gaps", which it then knocked down; the programme only briefly acknowledged the theory that God was "God of All", Creator of the laws of Nature.
- The issue of irreducible complexity should have been approached by looking at the simplest cell and examining its irreducible complexity.
- Religious feelings and revelation were used to represent the main argument for God.
- A scene in which people were shown singing and dancing in the street was broadcast in order to ridicule religious belief.

In reply, the BBC Trust's Senior Editorial Strategy Adviser said 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 against the Editorial Guidelines on Impartiality and Accuracy. She noted that the programme was one of a series of *Horizon* programmes broadcast on BBC Four. These programmes were described as *Horizon* "Guides". Each one explored a theme through archive footage drawn from almost fifty years of BBC scientific coverage. Other programmes included *Blink: A Horizon Guide to the Senses*, *Immortal?: A Horizon Guide to Ageing* and *Mars: A Horizon Guide*. The Senior Editorial Strategy Adviser noted that the programmes did not set out simply to explore the senses, ageing or Mars. Instead, they explored how each subject had been covered through five decades of *Horizon* broadcasts.

The Senior Editorial Strategy Adviser noted that the programme that was the subject of the appeal was described on the BBC website as follows:

"As the Pope ends his visit to Britain, historian Dr Thomas Dixon delves into the BBC's archive to explore the troubled relationship between religion and science. From the creationists of America to the Physicists of the Large Hadron Collider, he traces the expansion of scientific knowledge and asks whether there is still room for God in the modern world."

The programme's script set out the context of the broadcast as follows:

"For nearly 50 ... years Horizon and the BBC have witnessed scientific advances and reported on when science has met with religion. Looking back over five decades of science programmes I want to ask whether in this modern scientific age there is any room left for God. The story of science and religion is not just one of conflict. It's much more varied and interesting than that."

The Senior Editorial Strategy Adviser noted that the programme went on to explore those moments when science and religion found themselves in apparent contradiction with each other, as seen through archive footage from *Horizon*. It also looked at what happened when new scientific discoveries started to explain events that were once seen as the workings of a divine hand, such as "acts of God".

The Senior Editorial Strategy Adviser said that it was useful to note the question mark in the programme title: have scientific advances explained away the existence of God? The programme examined two potential scientific arguments for God, as captured in the *Horizon* archive. The first argument for God explored by the programme was the challenge to evolutionary theory made by the Intelligent Design movement, including the "God-of-the-gaps" theory. The programme's coverage of Intelligent Design was seen through archive footage of a notable US court case in 2006. The case hinged on whether Intelligent Design was based on evidential science or a religious view (the US Constitution does not allow for religious teaching to be taught as science in public schools). Archive footage reported the conclusion of the case which was that Intelligent Design was based on religious belief rather than science, and its teaching was therefore banned.

The second argument for God explored by the programme was the bigger picture to which the complainant referred: is there a creator who has laid down the very laws of nature? The programme cited Newton and Einstein as scientists who saw no contradiction between science and religion: they recognised a divine beauty in the laws of nature. Whilst some physicists believed that science had explained away God's hand, the presenter noted that these descriptions of dark matter and multiple universes appeared to be a matter of faith.

"It's easy to be sceptical about multiple universes. After all even if they do exist they're impossible to see and many physicists think they're impossible to test. For me this is a point where science and religion begin to look like they're not so different after all.

In this programme we've journeyed through science asking if in this modern age there's any room for God. We've looked for God in the gaps in scientific understanding and seen how new discoveries can close those gaps. We've looked for God in the grandest laws of nature in the mind-bending strangeness of the universe. Science can describe so much about our world and constantly pushes the boundaries of our knowledge. But many still wonder why – why does anything exist at all, why do we humans find ourselves here and what's it all for?"

In considering the nature of the content, the likely audience expectation and any

signposting that may have influenced that expectation, the Senior Editorial Strategy Adviser believed that the programme had followed the brief it set out for itself in its opening link and in its billing. The Senior Editorial Strategy Adviser said that the programme did not purport to be an examination of the debate between evolutionary theory and a God-created universe. It was a history of the entire relationship, including the tensions in that relationship, of religion and science – as seen through the prism of fifty years of *Horizon* programmes. She said that, despite this broad brief, the programme did explore significant challenges to evolutionary theory and left the audience wondering whether faith and science had something in common when considering how life began.

The Senior Editorial Strategy Adviser agreed with the Editorial Complaints Unit that the programme did not treat those with religious beliefs in a condescending, negative or irrational manner and that it approached discussion of the intersections between religion and faith in a sensitive and open-minded manner.

For these reasons, the Senior Editorial Strategy Adviser concluded that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust.

The complainant requested that the Committee review the decision not to proceed with the appeal. He said that the Senior Editorial Strategy Adviser had only partially (and therefore incorrectly) stated the complaint. She had stated that the complaint was that the programme was biased in failing to fairly represent the views of those who supported the scientific case for creationism. His argument was that what the BBC presented in opposition to "religion" was not science but another religion, or set of beliefs and that it failed to acknowledge the nature and limits of scientific enquiry in determining facts. The resulting bias was due to a failure to acknowledge the religious (belief-based) nature of atheistic materialism which he said was promoted by the BBC as "science".

The complainant went on to say that the programme must be seen in the context of a continuous output of comment from the BBC which he said presented beliefs about origins as scientific facts when, in his view, the evidence from proper science was mounting against these beliefs. He said the BBC repeatedly failed to comment on findings which cast doubt on the atheistic theories he said it promoted. The complainant said the BBC had a responsibility to be objective and honest about the difference between beliefs and facts – something which he said it consistently failed to do.

In the complainant's view, the programme did not simply explore the use of archive material, as the BBC claimed, but put forward a new argument through the commentary. The complainant disagreed with the claim that the programme was designed to stimulate debate as, in his view, it failed to present both sides of the argument fairly and honestly. He said that the characteristics of true science needed to be separated from those aspects of scientific enquiry which were speculative and which depended on debatable assumptions. The complainant said that the BBC did not fairly present opinion as opinion, and theory as theory. Nor did it provide a clear and honest assessment of the nature of scientific enquiry, characterising atheistic religious theory as science and Intelligent Design and Biblical Christianity as unscientific and irrational.

The complainant maintained that the programme was biased. In his view, two short comments at the end of the programme regarding the similarity between some scientific theories and faith, plus a statement regarding uncertainty about the purpose of our existence, did not establish a case for the programme being a balanced, honest representation of the issues. He said that the purpose of the programme was clear from the start when the presenter said that "It has become part of the popular idea that there is an inevitable clash between science and religion, that they are forever locked in a battle

for supremacy, today 150 years on it would seem that science has won the war". In the complainant's view, science (observational real science) was not at war with Biblical religion. The findings of true operational science only served to bolster the case for an intelligent designer.

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 in question and the complainant's correspondence with the BBC at Stages 1 and 2.

The Committee considered that the complainant had raised interesting questions about the nature of theoretical science and its relationship with religious belief. However, the Committee was satisfied that, given the specific context of this programme, it was not necessary to have included the kind of analysis of scientific and religious belief that the complainant had provided in his complaint. The Committee noted that the Editorial Guidelines explain that due impartiality means that impartiality "must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation"; due impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across the BBC's output as a whole, or within a single programme.

The Committee agreed that the programme used the BBC's archive to take a historical look at the areas where science and religion had been potentially in conflict. In this regard, and noting the points that had been made in the course of the complaint, the Committee agreed that it had not seen any evidence which would lead it to conclude that the programme had lacked due impartiality.

The Committee noted the complainant's argument that it was inaccurate to refer to atheistic origin theories as science when, in his view, they were no more scientific than religious beliefs. The Committee accepted that this was a valid viewpoint, and it noted that the programme had included observations to that effect. However, the Committee did not agree that this view was so well established as to render inaccurate the description of atheistic origin theories as science, given that this was a widely accepted description of such theoretical academic disciplines.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on accuracy or impartiality in relation to this complaint.

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

HardTalk, BBC News Channel, 8 May 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 to appeal against the decision of the Editorial Complaints Unit not to uphold his complaint about the introduction to an edition of *HardTalk* which he set out as follows:

Presenter: American presidents have long been criticised for being too in thrall to the Jewish lobby. The American Jews influence US foreign policy and that explains Washington's unwavering support for Israel.

So what happens if American Jews fall out of love with Israel? That's what the Jewish American academic Norman Finkelstein claims is happening.

The complainant believed that the introduction gave the impression that it was the BBC's editorial position that American presidents had been "too in thrall to the Jewish lobby". He said this phrase was issued as a statement of fact whereas, in his view, it was inaccurate. The complainant said that viewers would have understood from the introduction that it was the efforts of the Jewish lobby which lay behind the support for Israel among America's politicians. The complainant said that this was both inaccurate and extremely offensive to the Jewish community.

The complainant pointed out that American Jews constituted less than 2% of US citizens and most American Jews voted Democrat, while the staunchest support for Israel in recent years had come from Republican administrations, largely because of the massive influence of evangelical Christians in that party. The complainant said that stating the Jews determined the foreign policy of the most powerful country in the world sounded anti-Semitic.

The complainant rejected the BBC's argument that, in the context of the introduction as a whole, the claims about Jewish influence were referring to the arguments of Norman Finkelstein and the wider debate around the issue. The complainant believed that viewers would have been left with the impression that they were statements of the BBC's editorial position. The complainant cited the pauses in the presenter's delivery and said they were sufficiently long that viewers would think the opening lines were unrelated to the comments specifically about Norman Finkelstein, which followed.

In reply, the Trust's Senior Editorial Strategy Adviser explained that, having read the relevant correspondence and watched the programme in question, 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 said that it was a standard technique in television and radio for a presenter to begin an interview with an introduction which raised the areas that would be under discussion. In this case, the presenter gave an introduction of a little over thirty seconds, which was followed by the programme's introductory graphic sequence before the interview began. The full introduction was as follows:

Presenter: American presidents have long been criticised for being too in thrall to the Jewish lobby. The American Jews influence US foreign policy and that explains Washington's unwavering support for Israel. So what happens if American Jews fall out of love with Israel? That's what the Jewish American academic Norman Finkelstein claims is happening. But then he's nothing if not controversial, he, after all, is famous for accusing Jews of exploiting the Holocaust, and his actions have so incensed Israel it's banned him from entering the country. Could he be right? And if he is, what does that mean for Middle-East policy?

The first issue which the Senior Editorial Strategy Adviser considered was the complainant's assertion that the comments about the American Jewish lobby would have been perceived by viewers as being the presenter's (and therefore by extension the BBC's) editorial view.

She noted the view of the ECU that the second line of the presenter's introduction was a continuation of the thought expressed in the first and that, notwithstanding the pause which separated them, it set out an aspect of the views referred to in that preceding line.

The Senior Editorial Strategy Adviser recognised that the views were not attributed to anyone in particular and agreed that they were not specifically identified as belonging to the upcoming guest, Norman Finkelstein. However, it was clear, in her view, that the presenter was expanding on what it was that those who had long criticised American presidents took issue with – namely, that in the opinion of those critics, American Jews influenced US foreign policy and it explained what they saw as America's unwavering support for Israel. The framing of the second sentence, particularly on hearing it, was familiar as a standard spoken broadcast device where the interviewer frequently omitted the explicit link because the context and the tone fulfilled the role. The sentiment also reflected the position broadly held by Mr Finkelstein, as the viewer shortly heard.

After looking again at this section of the programme, the Senior Editorial Strategy Adviser agreed with the view reached by the ECU, namely that the second line of the introduction referred back to the first.

The Senior Editorial Strategy Adviser then considered the complainant's argument that it was not true that a Jewish lobby influenced American foreign policy and was responsible for America's unwavering support for Israel. She noted that the requirement for "due accuracy" in the Editorial Guidelines took into account whether an assertion was made as a statement of fact or an opinion and, if the latter, what evidence existed to support that opinion, such that including it was editorially justified. There was no requirement for absolute accuracy in the Guidelines, particularly for assertions made by third parties or which were a reflection of third party views.

The complainant had specifically mentioned the size of the Jewish population in America and also the fact that traditionally the majority of Jews voted Democrat which was relevant because it was the Republican Party which was more constant in its support towards Israel. The argument this raised was that it questioned how such a small number of voters with fixed political affiliations could possibly be considered to be an effective lobby. The complainant's suggestion was that reference to such a lobby could then fuel anti-Semitic sentiment.

The Senior Editorial Strategy Adviser noted that in the interview Norman Finkelstein offered specific examples and information for the viewer on what he meant when he referred to the lobby. He did not specifically refer to it as a "Jewish lobby" but he used

the word "lobby" frequently and all those he specifically referred to were American Jews. He spoke about two forces: the formal "Israel lobby" and a second group:

"But beyond the hardcore, what makes the lobby so powerful is the periphery – of large numbers of Jews in influential places, in magazines, newspapers, on television, in film. A large periphery of Jews who also have deeply felt, heartfelt feelings for Israel."

He cited two prominent writers who had begun publicly stating their criticism of Israel:

"... there's what you might call the anecdotal evidence. For example the current editor of the influential New Yorker magazine in the United States, David Remnick. He has in recent months, in the last year, been expressing strong disapproval of Israeli policies. There's the former editor of the, senior editor of the New Republic, Peter Beinart, who just came out with a book called the Crisis in Zionism ..."

"How do you account for the fact that people like David Remnick, the current editor of the New Yorker magazine, which basically services a largely Jewish audience, or the former Senior Editor of the New Republic, Peter Beinart. Now the New Republic was rabidly pro-Israel. Peter Beinart himself is an Orthodox Jew and they too are now speaking out in quite strong terms ... critical of Israeli policy."

As the examples demonstrated, Dr Finkelstein's definition of the lobby did not rely on voter numbers or political affiliation. A recent article from the Associated Press noted that only 6% of Jews said a candidate's positions on Israel influenced their vote. However, the article continued:

"The tiny numbers are overlaid with an outsize influence. Campaign donations from Jews or Jewish and pro-Israel groups account for as much as 60 per cent of Democratic money.

"In July when Mitt Romney went to Israel and made controversial remarks about Israeli culture being superior to Palestinian, travelling with him was a Jewish American Republican donor, Sheldon Adelson. Mr Adelson, who supported settlements and opposed a two-state solution, had just donated a reported \$10 million to Mr Romney's presidential election campaign. And even if the importance of the Jewish vote was more about perception than numbers, there was evidence that presidential hopefuls acted on the assumption that it was important to woo the Jewish vote. According to a newspaper in South Florida, the Obama campaign 'deployed a Jewish state legislator and three rabbis to Boca Raton on Friday to make the case that the president is a friend of Israel and that there's no reason for Jewish voters to abandon their decades-long allegiance to the Democratic Party'."

The Senior Editorial Strategy Adviser accepted that it could certainly be argued that there were reasons other than pressure from American Jews to explain why America was generally supportive of Israel, for example that it needed a friendly power at the centre of such a volatile region. But the introduction made clear that it was Norman Finkelstein's opinion that American Jews were falling out of love with Israel and he was clearly identified as someone who was both controversial and who held opinions critical of both Israel and of American foreign policy in Israel.

The Senior Editorial Strategy Adviser noted the complainant's view that, regardless of whose view the introduction was articulating, the claims were offensive because they perpetuated the anti-Semitic idea that Jewish people had a disproportionate influence

over American foreign policy. In her view, for an appeal on this point to have a reasonable prospect of success would depend to a great extent on whether the claims were duly accurate. The Senior Adviser considered that while the claims could not be stated as conclusive fact, from the content of the programme and the wider citations, there was evidence that made including the claims editorially justifiable.

The Senior Editorial Strategy Adviser also considered the complaint against the Editorial Guidelines for Harm and Offence. She did not consider that the complaint engaged these Guidelines and believed it would not, therefore, have a reasonable prospect of success on this point.

The complainant requested that the Committee review the decision not to proceed with the appeal. He said that the programme perpetuated the anti-Semitic idea that "the American Jews influence US foreign policy and that explains America's unwavering support for Israel". The complainant said that Jewish political opinions, including on Israel, varied widely. Support for Israel among the US public generally had been, and remained, consistently strong. Evangelical Christians, who represented a very significant proportion of the US population, were the most uncritical supporters of Israel. The fact that Jews traditionally voted Democrat while it was the Republican Party that was more constant in its support for Israel suggested that, if there was a Jewish lobby in support of Israel, it did not have much influence.

The complainant maintained that viewers would have got the impression from the programme that the presenter was saying, on behalf of the BBC, that American Jewish influence explained America's unwavering support for Israel and this would have encouraged anti-Semitic sentiments.

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 in question.

The Committee, having listened to the introduction, agreed that it was clear that it was Norman Finkelstein's opinion that American Jews were falling out of love with Israel and he was clearly identified as someone who was both controversial and who held opinions critical of both Israel and of American foreign policy in Israel. The Committee did not agree that the impression was given that the opening statement was that of the presenter (and therefore of the BBC).

The Committee noted the complainant's argument that, regardless of whose view the introduction was articulating, the claim was offensive because it perpetuated the anti-Semitic idea that American Jews influence American foreign policy and this explained America's unwavering support for Israel. The Committee noted the complainant said that ascribing powers to Jews they do not have is a tactic used by anti-Semites. The Committee noted that the complainant had accepted that, for various reasons, American Jews do have a greater influence than could be expected from 2% of the population. However, the complainant argued that Jewish political opinions, including on matters relating to Israel, vary widely, and could not be said to account for American foreign policy in this area.

The Committee noted that the complainant had put forward arguments against the viewpoint that the Jewish lobby in America was responsible for US foreign policy with regard to Israel. He noted for example a strong backer of Obama who was Jewish but

was, he said, "no friend of Israel". The Committee was satisfied, however, that it was not likely to find a breach of the Guidelines on Accuracy on the basis that the programme had interviewed a person who was acknowledged as holding controversial opinions critical of both Israel and American foreign policy in Israel.

The Committee agreed with the Senior Editorial Strategy Adviser that, while the view which was effectively attributed to Norman Finkelstein could not be stated as conclusive fact, from the content of the programme and the wider citations, it was editorially justifiable to include the claim in this context. The Committee considered that it was possible for the BBC to broadcast a clearly ascribed opinion that a group, in this case the "Jewish lobby", has a collective effect on American foreign policy. The Committee did not agree that this constituted anti-Semitism, and therefore the complaint did not engage the Harm and Offence Guidelines.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on Accuracy or Harm and Offence in relation to this complaint.

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

Dragon's Eye, BBC Wales, 2 February 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 to appeal against BBC Audience Services' decision not to uphold his complaint about an interview on the BBC Wales current affairs series *Dragon's Eye* which, in his view, presented an image that charity maladministration only applied to ethnic minorities. The complainant argued that BBC Wales had allowed itself to be used to create a situation of racial "divide and rule". He said that the Editorial Guidelines on Impartiality clearly stated that the BBC must consider a broad perspective, taking into account the subject and nature of the content, and the failure of the BBC to do this had led to the social and racial stigmatising of ethnic minorities and the organisations that represented them. The complainant said that coverage of this issue was a disproportionate use of BBC resources to publicise an unequal and biased story of charity maladministration to the point that people may not be able to get a fair hearing.

The complainant also argued that the interview was conducted in an aggressive manner, and felt that this did nothing to enlighten the audience on the broader issues. He noted that not all charitable institutions were subject to the same degree of public scrutiny. In particular, registered charities, such as the All Wales Ethnic Minorities Association (AWEMA), were subject to a greater degree of regulation and intervention than exempt charities, such as higher education institutions. In his view, the public should be fully informed as to why some charities were held to account while others were not.

The complainant also raised an issue of complaint handling.

In reply, the Trust's Senior Editorial Strategy Adviser explained that, having read the relevant correspondence and watched the programme in question, 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 Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She said that "the direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38(1)(b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards.

She noted that the BBC's Editorial Guidelines confirmed this by stating that the BBC may cover whatever stories it chooses, provided there are good editorial reasons for doing so.

The Senior Editorial Strategy Adviser noted that the complainant had argued that coverage of financial irregularities at AWEMA was disproportionate. She noted his view that the BBC should also have investigated other instances of charities' wrongdoings and that a failure to do so constituted a breach of the BBC's Editorial Guidelines on Impartiality. However, the Senior Editorial Strategy Adviser noted that AWEMA was a significant charity in Wales. There had been an investigation into maladministration and admissions by the Chief Executive regarding his use of charitable funds to pay off a credit card debt and all this information had been presented to the Charity Commission. The

Senior Editorial Strategy Adviser said that the story raised serious issues of public interest and concern and, in her view, there were clear editorial reasons justifying the BBC's decision to cover it.

The Senior Editorial Strategy Adviser noted that the purpose of the Guidelines on Impartiality was to ensure due impartiality in BBC content. However, they did not place a duty on the BBC to cover other unrelated items, even if they raised issues of a similar nature, and the Trust only had a role as regards to items that had been broadcast, not matters that might have proved worthy of investigation.

In the Senior Editorial Strategy Adviser's view, the complaint that the BBC breached its duty of impartiality by covering this subject while not investigating other concerns about different charities did not engage the Guidelines on Impartiality. The Senior Editorial Strategy Adviser did not, therefore, propose to place this aspect of the complaint before the ESC.

Turning to the complaint that the item amounted to social and racial stigmatising of ethnic minorities and the organisations that represented them, the Senior Editorial Strategy Adviser said that she could find no evidence from the output to support this conclusion. At no point were social, racial or ethnic minority issues raised or referred to, either by the interviewer or by the interviewee. The interview was conducted entirely on the basis of the evidence from the investigation into handling of funds. The Senior Editorial Strategy Adviser could find no evidence to suggest that the BBC's coverage of this item implied ethnic minorities were more likely to be involved in maladministration or corruption, or that it was racist to cover the subject. She did not think, therefore, that the complaint had a realistic prospect of success on this point.

The complainant had also alleged that the interview was aggressive in tone and that it was unfair to the interviewee. Having watched the interview, it seemed to the Senior Editorial Strategy Adviser that, while the interviewee faced robust questioning, she was a clear and capable speaker, and was given a fair opportunity to respond to the allegations put to her. The Senior Editorial Strategy Adviser added that, under the Fairness guideline, it was only open to interviewees themselves to make complaints about their treatment. For these reasons she did not believe the appeal had a reasonable prospect of success on this point and did not propose to put it before the ESC.

Referring to the claim that the complaint had been mishandled by the BBC, the Senior Editorial Strategy Adviser said that, in a matter where the BBC had acknowledged and apologised for the delays that the complainant had experienced, the Editorial Standards Committee would generally consider the matter resolved. She did not, therefore, think the complaint about delay had a realistic prospect of success on this issue.

The Senior Editorial Strategy Adviser noted that the complainant had raised a separate point about complaint handling, saying that the responses he had received had dealt with minor issues, rather than the one that was, to him, most significant. He believed the BBC should do more to explain the regulatory structure around charities so that it was clear that registered charities were subject to a greater degree of public scrutiny than exempt charities. In response, BBC Wales had said that it regularly covered issues involving charities, regardless of the ethnic origin of the individuals involved. To take one example, it had recently devoted considerable coverage to the financial difficulties that had emerged at Llandovery College, resulting in its failure to pay staff.

The Senior Editorial Strategy Adviser said that decisions about whether other charitable establishments merited investigation were a matter of news judgement, with which the Trustees did not interfere in accordance with the separate duties of the Trust and

Executive as set out in the Royal Charter. The Senior Editorial Strategy Adviser therefore believed the appeal had no reasonable prospect of success on this point.

The complainant requested that the Committee review the decision not to proceed with the appeal. He referred to a story concerning Trinity St David, suggesting that pressure was being placed on the BBC not to report this. The complainant alleged that where negative news focussed on only one section of society, it created a false and stigmatising perception. He said that the BBC must include a broad perspective, which it had failed to do. The complainant said that the example of Llandoverly College was irrelevant because this was not accused of a criminal offence and was a registered charity.

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.

Having viewed the programme, the Committee did not agree that the coverage of this item implied ethnic minorities are more likely to be involved in maladministration or corruption. The Committee did not agree that it was racist to cover the story and therefore it concluded that there was no reasonable prospect of success for an appeal on this point.

The Committee noted the complainant's argument that the BBC's coverage of financial issues at the All Wales Ethnic Minorities Association was a disproportionate use of BBC resources. The Committee was mindful that the decision to cover a news story was a matter of editorial judgment, informed to a great extent by the news agenda. The Committee agreed that the decision to cover the AWEMA story was an editorial matter and as such was the responsibility of the Executive Board and is not a matter for the BBC Trust unless, for example, it related to a breach of the BBC's editorial standards. The Committee did not consider that it would be likely to conclude that this point of the complaint related to a breach of the BBC's editorial standards.

The Committee noted the complainant's view that there were other charitable establishments which merited investigation. The Committee agreed, however, that this was also a matter of news judgement and is therefore the responsibility of the Executive Board and is not a matter for the Trust. The Committee did not believe that the complainant had brought compelling evidence that the BBC was acting to "cover up" stories relating to exempt charities.

The Committee did not agree with the complainant's view that the legitimate news judgements made by the BBC constituted evidence that the Impartiality Guidelines had been breached. The Committee therefore agreed that there was no reasonable prospect of success for an appeal on this basis.

In relation to fairness, the Committee considered that, on the basis that the interviewee was given a fair opportunity to respond to the allegations put to her, there was no reasonable prospect of it deciding that the programme had breached the requirements of the Fairness Guidelines. The Committee also noted that it does not normally take fairness complaints except from those with a "direct interest" in the material included in the programme.

With regard to the handling of the complaint, the Committee considered that apart from the delay at Stage 1, for which the BBC had apologised, the responses that the complainant had received had been appropriate. The Committee wished to apologise

again for the delay that the complainant had experienced; however, it considered that the matter of complaint handling had been resolved.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on impartiality or fairness in relation to this complaint.

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

Sportsworld, BBC Radio 5 Live, 22 July 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 to appeal against the decision of the Editorial Complaints Unit not to require the BBC to broadcast an apology for a breach of the Editorial Guidelines on Impartiality. The ECU had upheld a complaint about an impartiality breach in a live interview between presenter Garry Richardson and the then Culture Secretary, Jeremy Hunt, regarding the possibility of strike action by the Public and Commercial Services Union.

The complainant argued that the BBC ought to broadcast an apology and that in proposing to publish the apology online, the BBC was "aping the worst of the tabloid press". The complainant said that if the BBC were to draw any advantageous lessons from the breach, an apology should be read on air, preferably by the presenter himself. The complainant said this was particularly necessary given that a number of people had complained about the comments, and also that in the first instance the programme makers had defended the programme.

In reply, the Trust's Senior Editorial Strategy Adviser explained that, having read the relevant correspondence and listened to the item in question, 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 referred to the Editorial Guidelines on Accountability which state:

19.1.2 We are open in acknowledging mistakes when they are made and encourage a culture of willingness to learn from them.

19.1.3 We will use the BBC's online presence to provide proper reporting to the public on complaints we have received, and actions we have taken.

19.4.7 When the Editorial Complaints Unit identifies a serious breach of the standards in these Guidelines, its finding will normally be published on the BBC complaints website. It may also direct the BBC to broadcast an apology or correction.

The BBC's Complaints Framework, Procedure 1, Editorial Complaints, which sets out BBC Complaints procedures in detail, states as follows:

"If a complaint is upheld in any respect, [the ECU] ensures that the BBC takes appropriate action in response to the finding."

The Senior Editorial Strategy Adviser noted that, with regard to the Trust's powers, when an appeal is upheld the Trust may:

- apologise to the appellant for a breach of the Editorial Guidelines

- require the Executive to take any appropriate remedial action to guard against the breach occurring again and/or consider appropriate disciplinary action, and to report back to the Trust
- publish its findings, including any directions to the Executive on remedial action on the complaints website; and/or
- require an on-air or published apology or correction.

The Senior Editorial Strategy Adviser noted that the relevant words of the interviewer were:

“They’re a disgrace, aren’t they? And, quick thought for you – it’s great that you’ve got these contingency plans and these people able to come in and you’ve trained them up to step in. Why not just let those people go on strike and when they want to come back after they’ve done all their disruptions say ‘sorry your job’s not there anymore’? Sack ‘em!”

The programme makers said that the intention was to press Mr Hunt from an unexpected angle and to see how far he would go in condemning the Union, and that no personal view was being expressed. The interview was covered by newspapers and the BBC issued the following press statement:

“Garry Richardson was seeking to clarify Jeremy Hunt’s views with robust questioning about the government’s response to the planned industrial action. The questions did not represent a personal point of view but were designed to explore and test the government’s position. The BBC is committed to reporting impartially on the week’s events and will continue to include a variety of opinions and voices, including of course the unions, in the run-up to Thursday’s possible action.”

Notwithstanding the initial arguments of the programme makers, the Editorial Complaints Unit found that there was a breach of the BBC’s Editorial Guidelines on Impartiality in that this was a “controversial subject” as defined by the Guidelines. It found that the interviewer’s questioning created an impression which went beyond what was appropriate in a programme of this kind, and tended to suggest that he was voicing a personal view.

The ECU explained that the programme makers, and the interviewer, had acknowledged that, on reflection, the interview would have been better if he had qualified some of his questions (for example using phrases such as “Some people would say...”). Upholding the complaint, the ECU stated that it was precisely the absence of such qualification which created the impression that a personal view, consisting of a warm endorsement of Mr Hunt’s position on an undeniably controversial matter, was being expressed, and the interview fell short of due impartiality as a consequence.

The Senior Editorial Strategy Adviser noted that when the ECU identified a “serious breach” of editorial standards it “normally” published its finding on the BBC’s website and it may also direct the BBC to broadcast an apology. Their discretion to direct a broadcast apology was reserved for cases which were not only a “serious breach” of standards but in addition merited this extra sanction, because the breach had resulted in unfairness to some individual or organisation, or when it was so material to the issues under discussion that it seriously affected the audience’s understanding of those issues.

In this case the ECU did not suggest or make a finding that Mr Richardson’s comments actually showed or were intended to show a personal view, nor that the audience’s understanding of the issue would have been seriously affected by this breach. The Senior

Editorial Strategy Adviser said that the Trust did have the power to direct the BBC to broadcast an apology; for example if the breach was so serious on its own facts that one was merited or if it was aggravated by some further matter, for instance if the breach was reckless, repeated or deliberate. In this case, however, the Senior Editorial Strategy Adviser did not consider that there was any evidence to suggest that this was so serious on its own facts that one was required or that there were any other aggravating circumstances.

The Senior Editorial Strategy Adviser noted that the BBC had said that in this case the presenter was trying to elicit a response and took an unusual approach to achieve this. Having reviewed the correspondence and listened to the item, the Senior Editorial Strategy Adviser was satisfied that the ECU's decision not to direct a broadcast apology was an appropriate use of its discretion. She did not believe that this matter raised such serious issues that further action would be required and she had therefore decided that the appeal did not have a reasonable prospect of success.

The Senior Editorial Strategy Adviser went on to apologise on behalf of the Trustees for this breach. She said that, in accordance with recent changes to the BBC's Complaints process, a formal apology would be published on the BBC's new corrections and clarifications page within the next few weeks.

The complainant requested that the Committee review the decision not to proceed with the appeal. He said that the whole purpose of an appeal was to decide when a complaint was a matter of substance and as his appeal had been upheld, he would have thought the BBC would have taken it as read that it was. He said that the decision to put the apology for the breach of standards on its website suggested a cover up. The complainant said that listeners had a right to hear the interviewer apologise on air.

The complainant also did not accept that there was a valid cost argument for not broadcasting an apology. The complainant said that the Accountability guidelines which referred to being "open in acknowledging mistakes when they are made" and encouraging "a culture of willingness to learn from them" meant that the interviewer should play a role in admitting his mistake.

The complainant concluded by saying that if a BBC broadcaster asking a government minister to sack hundreds of workers for carrying out a perfectly legal act was not worthy of a broadcast apology, he did not know what was.

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 the breach of the Editorial Guidelines which had been upheld by the ECU. The Committee endorsed that decision and agreed that on this occasion the interviewer had gone beyond what was acceptable under the Guidelines on Impartiality.

The Committee noted the arguments put forward by the complainant for an on-air apology and that he wanted the individual involved to play a role in admitting the mistake. However, the Committee was mindful of the specific circumstances which would require an on-air apology and that it is one of the most serious sanctions which could be imposed. The Committee agreed that in the circumstances of this breach, and in the absence of any evidence to the contrary, it would be unlikely to find that there had been

a breach of the Guidelines on Accountability on the basis that the ECU had not exercised its discretion appropriately so as to require an on-air apology.

The Committee noted that the complainant had considered that the fact his complaint had been upheld by the ECU rendered it a "matter of substance". The Committee wished to clarify that the matter of substance test related to the likelihood of a successful appeal. The Committee agreed that the complaint had already been upheld and that appropriate action had been taken. The Committee agreed that there would be nothing further to be gained from an appeal to the Trust in these circumstances and in this sense the complainant had not raised a matter of substance.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the BBC had breached the Editorial Guidelines on accountability in relation to this complaint.

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

Sportsound, BBC Radio Scotland, 10 May 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 to appeal against the decision of the Editorial Complaints Unit not to uphold his complaint about a discussion between BBC sports reporters in which the reporter Chick Young referred QC Paul McBride as having been "killed". The complainant said that the reporter's comment was disconcerting and added to the various conspiracy theories regarding the sudden death of Mr McBride. The complainant also complained that no apology or retraction had been made. In the complainant's view, this mistake showed a lack of professionalism and at worst it showed the reporter to be deliberately provocative.

The complainant also said that when this interview was subsequently put online, the BBC initially posted the original live recorded version, and later altered it by editing out the phrase about Mr McBride having been "killed", without clarifying that the recording had been edited in this way. The complainant said that he did not expect this from the BBC. The complainant wanted to know what the BBC's policy was with regard to "airbrushing" tapes of live broadcasts to correct errors.

In reply, the Trust's Senior Editorial Strategy Adviser explained that, having read the relevant correspondence and listened to the item in question, 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 in the programme the reporter said:

"One of the last conversations, Paul, I had, in fact it was the last conversation tragically I had with Paul McBride at Celtic Park before he was tragically killed – died of course".

It was inevitable, in her view, that on occasion reporters may inadvertently say something in live broadcasts by mistake. In this case, where the reporter said Mr McBride was "killed", he immediately corrected himself. She noted that the Editorial Complaints Unit had said that the reporter immediately clarified his comment, thereby minimising any likelihood that he would be misunderstood, and this supported the view that his comment was a genuine slip of the tongue. The Senior Editorial Strategy Adviser agreed with this assessment and, as the reporter had corrected himself in the same sentence, she did not believe that the Guidelines on Accuracy were engaged by the complaint.

The Senior Editorial Strategy Adviser did not therefore believe that the appeal on this point raised a matter of substance or that it would have a reasonable prospect of success if placed before the Editorial Standards Committee.

Turning to the complainant's second point, regarding the editing of the live broadcast for posting online, the Senior Editorial Strategy Adviser said that the BBC had several guidelines which related to how programmes should be treated if put online. The BBC's Editorial Guidelines on Managing Online Content state:

“When a material change is made to an item of content, the change should normally be indicated to users unless, for example, there are legal or editorial reasons not to do so.”

However, the Guideline on production techniques explains:

“3.4.16: There are very few recorded programmes that do not involve some intervention from the production team, but there are acceptable and unacceptable production techniques. Consideration should be given to the intention and effect of any intervention. It is normally acceptable to use techniques that augment content in a simple and straightforward way, for example by improving clarity and flow or making content more engaging... Commentary and editing must never be used to give the audience a materially misleading impression of ... a contribution.”

Although first broadcast live, this programme was recorded and then put online and therefore it was entirely appropriate for the BBC to consider whether it should be edited. This was not a “material change” requiring the BBC to notify online users, but rather an edit, the purpose of which was to reflect the true intention of the speaker, thereby improving clarity and flow. The edit was made to clarify the contribution that was given by the reporter. It did not materially mislead the audience in terms of his contribution but removed any possible confusion and allowed his corrected comments to stand.

The Senior Editorial Strategy Adviser noted that the complainant had asked specifically for the Guidelines which allowed edits to be made to an online version of a programme without being advertised. She said that it was difficult to imagine how this particular edit could be explained to the audience in a way that was meaningful, without repeating the inaccurate comment about Mr McBride’s death. The BBC gave programme makers guidance on amending programmes that had been broadcast live and were to be made available online. There was no requirement for the BBC to specify when a programme had been edited prior to being made available online.

“Guidance on Live Output: What to do when you come off-air

Live events are often repeated in highlights programmes and are increasingly available on various ‘On Demand’ platforms (for example on the Radio Player, Interactive Television, Video On Demand or the iPlayer). Programme Editors should ensure that any derogatory remarks which caused concern on transmission are edited from any repeat or online provision. Where a defamatory remark has been made, programme editors should ensure they comply with all legal advice given. It is also the responsibility of the programme editors to ensure that, where appropriate, programmes with unexpected legal issues are not repeated or made available ‘On Demand’.”

Again, the Senior Editorial Strategy Adviser noted that the ECU had asked the programme makers why the version of the interview which was posted online was edited and they had explained that, since they felt there was a small chance someone might take offence, they had decided to remove the reporter’s inadvertent slip. The ECU viewed this as a reasonable explanation and the Senior Editorial Strategy Adviser agreed with this assessment. She did not believe, therefore, that the BBC’s Editorial Guidelines were engaged by this aspect of the complaint or that the complainant was raising a matter of substance which had a reasonable prospect of success.

The complainant requested that the Committee review the decision not to proceed with the appeal. He asked the Committee not to consider the inaccuracy by the reporter in saying that Paul McBride was killed, but to substitute this with another example from a

different set of circumstances so that the matter would be considered strictly in terms of matters of principle and practice. The complainant asked whether it would then be reasonable to amend this slip in the BBC website online record of the programme. He asked whether it would be reasonable to do this without advertising the fact that this had been done and whether such a scenario would be within the BBC's Editorial Guidelines.

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 relevant clip of the programme as originally broadcast.

The Committee noted the complainant had asked it not to consider the specific circumstances of this complaint but to consider the issue as a matter of general principle; however, the Committee did not agree that this would be helpful or indeed appropriate as specific circumstances are critical to editorial judgments. Moreover, it is not the role of the Committee to consider hypothetical complaints.

The Committee judged that the BBC website was not primarily an official record of the programme as broadcast, but an alternative platform for providing content to audiences. The Committee was satisfied that the editing of this programme for the purposes of improving clarity did not raise issues with regard to the Editorial Guidelines and there was therefore no matter of substance to be considered on appeal in this regard.

The Committee agreed that it had not seen any evidence to support the suggestion that the reporter's slip was intentional. However, it was satisfied that the immediate correction by the reporter meant that the audience was not misled and the inaccuracy was corrected appropriately. The Committee did not consider that the resulting broadcast raised any issues with regard to the Editorial Guidelines and there was therefore no matter of substance to be considered on appeal in this regard.

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

News bulletins, Radio Shropshire, 26 and 27 March 2012

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that three elements of 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 to appeal against the decision of the Editorial Complaints Unit not to uphold her complaints about news bulletins on BBC Radio Shropshire relating to the results of an inquest into her mother's death. Her appeal contained four elements:

1. The bulletins were not impartial or fair because Radio Shropshire did not ask for a balancing response from any member of the family after the inquest.
2. The bulletins were not accurate or impartial because they deliberately excluded reference to other issues the family was campaigning on and other investigations that were under way.
3. The bulletin on 26 March 2012 was inaccurate because it described her mother's dehydration as a "rare form", when it was the severity of the dehydration that was rare.
4. Radio Shropshire was part of a conspiracy to discredit and suppress an ongoing campaign on the issue of the funding of top-up fees in care homes.

In reply, the Head of Editorial Standards explained that, having read the relevant correspondence and listening to the items in question, she took the view that, while point 3 of the appeal did qualify for consideration by the Committee, the other three elements did not have a reasonable prospect of success and therefore did not qualify for consideration by the Committee.

On point 1, the Head of Editorial Standards said that the coroner's verdict was a decision by a judicial officer and must be reported as such by the BBC. In this case the coroner said that the care home had done all it could for the deceased and it was inevitable that this was a line that would be reflected. The Head of Editorial Standards noted that the complainant's family had sent press releases to Radio Shropshire in advance of the inquest result. These included the following statement:

"Whatever the outcome of the inquest we intend to obtain an independent medical report regarding our mother's illness and death... We shall then consider legal action for clinical negligence. We have also asked West Mercia Police for an Adult Protection Serious Case Review to now be carried out."

The Head of Editorial Standards believed that this statement was accurately and prominently reflected in Radio Shropshire's bulletins over the two days. Indeed, the family's position formed the introduction to the first, longer bulletin which the complainant had complained about, at 4.00pm on 26 March 2012, following the inquest. The introduction said:

"The family of a Shropshire woman who died 14 months ago, say they're considering legal action for clinical negligence and have also asked West Mercia Police for an Adult Protection Serious Case Review..."

The same bulletin, containing this statement, was repeated at 5.00pm, 6.00pm and 7.00pm the same evening. The statement was also included in short bulletins at 4.30pm, 5.30pm and 6.30pm. In a longer item, at 5.10pm, the statement was, again, repeated and the following was also said:

Presenter: But, as you were saying, her family didn't accept that [the coroner's verdict].

Reporter: No, her son ... described her death as premature and avoidable...

Presenter: ...So what do [the] family say now?

Reporter: Well, they didn't attend the inquest but, in a statement issued to us, they accused the Coroner's Office of being hostile to them from the beginning. They say they're going to obtain an independent medical report regarding their mother's illness and death, and they'll then consider legal action for medical negligence, and they've asked West Mercia Police for an adult protection serious case review.

The Head of Editorial Standards noted that the second programme which the complainant cited, at 8.00am the following day, 27 March 2012, made reference briefly to the family's position when it said that the coroner had rejected "her family's claim that her death was premature and avoidable". While this report did not contain material regarding the further action the family was planning, the Head of Editorial Standards noted that there was a longer piece at 7.40am which included the following:

Presenter: One of Shropshire's biggest care providers has been praised by a coroner after an inquest finding that a 91-year-old resident died of natural causes. But [the patient]'s unhappy family say they are considering legal action for clinical negligence... [A reporter goes on to provide some background and report of the inquest].

Presenter: But let me get this right, the family won't accept that [the verdict].

Reporter: No, her son ... describes her death as 'premature and avoidable'...

[after more detail from the reporter and an interview]

Presenter: So what do they [the family] say **now?**

Reporter: Well, they didn't attend the inquest but, in a statement they say they're going to obtain an independent medical report regarding their mother's illness and death and that they'll then consider legal action for medical negligence. They've also asked West Mercia Police for an adult protection serious case review.

The Head of Editorial Standards agreed with the ECU that it was not unreasonable for Radio Shropshire to have used the press release sent to them, and that there was no particular need for them to contact the family again for their reports. As far as the Editorial Guidelines were concerned, there was certainly no obligation on them to do so. For these reasons, she did not consider that the first point of the appeal had a reasonable prospect of success.

On point 2, the complainant argued that there were two stories relating to the family, and that these were deliberately kept separate. In addition, there were various investigations into the doctors and the hospital that the family were pursuing, and these should also have been mentioned. The first story was about a long-running case involving the Local Government Ombudsman and Shropshire Council concerning fees payable to the care home where the complainant's mother had lived. This story was covered by Radio Shropshire in October 2011. The second story, about the inquest verdict, was the subject of the complaint.

The Head of Editorial Standards did not agree that news reports on the outcome of the inquest needed to refer to the care home fees story from the previous year. As far as the Editorial Guidelines were concerned, she could see no argument that these other aspects should have been included for the sake of accuracy or impartiality. She did not therefore believe that this element of the appeal had a reasonable prospect of success.

On point 4, the Head of Editorial Standards said that she could see no evidence to support the complainant's allegation that the BBC was, in effect, part of a conspiracy to discredit and suppress a continuing campaign on the issue of the funding of top-up fees in care homes. The Head of Editorial Standards noted that Radio Shropshire had covered the funding of top-up fees. She also noted that an example of this, from 4 October 2011, which included an interview with the complainant's family, had been sent to the complainant by Audience Services. The Head of Editorial Standards did not believe therefore that this element of the appeal had a reasonable prospect of success.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with three elements of the appeal. She listed various matters which she said Radio Shropshire had chosen not to cover. She said that while there might be, from time to time, occasional coverage on Radio Shropshire of problems with elderly social care funding, such coverage was both perfunctory and deferential. She alleged that the Council was always given the benefit of the doubt and the last word.

The complainant also said that in not connecting the story about top-up fees with the inquest story, Radio Shropshire had insulted the audience's intelligence and damaged the station's credibility. She maintained that Radio Shropshire's coverage of social care funding was biased and inaccurate.

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 was also provided with the relevant news bulletins.

The Committee noted that the Head of Editorial Standards had decided that the element of the complainant's appeal relating to the description of the complainant's mother's dehydration (point 3) did qualify for consideration on appeal, and it agreed with that decision.

The Committee looked at the three remaining points, which the Head of Editorial Standards had decided did not have a reasonable prospect of success and therefore did not qualify for consideration by the Committee.

Point 1 – The allegation that the bulletins were not impartial or fair because Radio Shropshire did not ask for a response from any member of the family after the inquest.

The Committee noted that the news bulletins had reported the decision of a judicial officer. The Committee agreed that it was appropriate for the BBC to have reflected the coroner's finding that the care home had done all it could for the deceased. The Committee noted, however, that several reports had conveyed the family's position accurately and prominently on the basis of the press release the family had sent Radio Shropshire in advance of the inquest result.

The Committee noted that one of the press releases sent to Radio Shropshire by the family set out the family's position "whatever the outcome of the inquest". The Committee agreed that, in such circumstances, it was reasonable for Radio Shropshire to have used the press releases sent to them, and there was no particular need for them to contact the family again for their response.

The Committee noted that, in her response to the Head of Editorial Standards' letter, the complainant listed a number of issues that she said Radio Shropshire had chosen not to cover and which had been included in the press releases sent to Radio Shropshire. These issues included, amongst other things, the announcement by Shropshire Council on its website to "inform all service users of a historical problem with the Third Party Contribution process" which may have affected them. The Committee noted that 'due impartiality' requires that the impartiality is 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. In view of these considerations, the Committee agreed that it would be unlikely to find that omitting to mention these wider issues in the bulletins about the inquest result would render them partial.

The Committee concluded that the bulletins were sufficiently and appropriately balanced and agreed that this point of the complaint did not have a reasonable prospect of successfully establishing a breach of the Editorial Guidelines on Fairness or Impartiality.

Point 2 – The allegation that the bulletins were not accurate or impartial because they deliberately excluded reference to other issues the family was campaigning on and other investigations that were under way.

The Committee noted the complainant's view that the news story about the inquest should have been linked in BBC Shropshire's bulletins to a previous story about a dispute over fees at the care home. The Committee also noted that, in her response to the Head of Editorial Standards' letter, the complainant had mentioned a number of other issues that Radio Shropshire had chosen not to mention in the context of the bulletins about the inquest result. These included complaints over care, recommendations by the Ombudsman and other linked events. The complainant considered that these issues should have been mentioned because the news story about the inquest was linked to an ongoing structural issue with elderly social care funding by the Council.

The Committee accepted that the family's campaign encompassed issues that went beyond the result of the inquest. However, taking account of the subject and nature of the content and the likely audience expectation, the Committee decided that, for a general news audience, there was no requirement under the Guidelines on Impartiality that the other issues should be covered when reporting the results of the coroner's inquest. The Committee agreed that there was no reasonable prospect of success for an appeal on this point.

Point 4 – Radio Shropshire was part of a conspiracy to discredit and suppress an ongoing campaign on the issue of the funding of top-up fees in care homes.

The Committee agreed that the choice of which stories to cover in news bulletins was a matter of editorial judgment which would depend to a large extent on the news agenda of the day. The Committee was mindful that the Royal Charter defines the direction of the BBC's editorial and creative output as the responsibility of the Executive Board and one in which the Trust does not normally become involved. The Committee considered that the absence of coverage about the funding of top-up fees by the complainant was not of itself evidence to support the allegation that Radio Shropshire was part of a conspiracy to discredit and suppress a continuing campaign on the issue of the funding of top-up fees in care homes. In any event, the Committee noted that Radio Shropshire had in fact covered the funding of top-up fees (for example in the interview with a member of the complainant's family which was broadcast by Radio Shropshire on 4 October 2011). The Committee agreed that there was no reasonable prospect of success for an appeal on this point.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on impartiality or fairness in relation to these three elements of the complaint.

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

BBC News at Six, BBC One and BBC News Channel, 25 April 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 to appeal against the decision of the BBC's Director of News not to uphold a complaint made on behalf of the Socialist Labour Party (SLP) about the lack of coverage given to the SLP by BBC News.

The complainant argued that bias had been shown against the SLP in a BBC News report about smaller parties contesting the May 2012 local elections in England. The report referred to the Green Party, UKIP, the Respect Party, the English Democrats and the BNP but not the SLP. The complainant accepted that both the Green Party and UKIP had fielded sufficient candidates in the local elections to warrant inclusion under the Election Guidelines. However, he took issue with the reasons given for including the other three parties.

The complainant was told by the BBC that George Galloway's by-election victory in Bradford justified the inclusion of the Respect Party. While he did not complain about the inclusion of the Respect Party, the complainant noted that it had fielded fewer candidates in the local elections than the SLP.

Regarding the decision to include the BNP, the complainant was told by the BBC that the BNP was going through a rebuilding phase after an internal power struggle. The complainant suggested that, equally, the SLP merited being included in the report because it was going through a period of growth. Also, the SLP had polled more votes than the BNP in the previous year's Scottish Parliamentary and Welsh Assembly elections, the most recent national elections to take place in Britain at the time.

The complainant also criticised the justification for including the English Democrats in the report – namely the topicality of its campaign about the referenda of elected mayors in English cities. The complainant said this was worrying because it suggested that a party would gain coverage if it raised any issue that was topical, irrespective of its size, level of support and electoral record. He said that the SLP campaigned on many policy areas that were also topical, for example tax avoidance and evasion, and, under the same logic, might also therefore have been included in the report.

The complainant believed that the BBC never intended to refer to the SLP as part of the item and that the BBC was trying to stunt the growth in electoral support, which he said the SLP had seen in recent years, by cutting all mention of it from broadcasts. The complainant added that the BBC had not mentioned his own candidacy in the forthcoming Cardiff South and Penarth by-election, despite the fact that he had sent information about this to the Corporation and that candidates from other parties had been mentioned.

In reply, the Trust's Senior Editorial Strategy Adviser explained that she had read the relevant correspondence and that an independent adviser had watched the item in question. The Senior Editorial Strategy Adviser considered that the appeal did not have a reasonable prospect of success and therefore that it should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser referred to the Editorial Guidelines under the heading Broadcasting During Elections, and to the Election Guidelines for the May 2012 local elections.

Looking first at the Respect Party, the Senior Editorial Strategy Adviser noted the BBC's argument that George Galloway's recent by-election victory in Bradford meant there was a strong editorial justification for including a mention of Respect to illustrate the potential impact of smaller parties. She explained that the Editorial Guidelines allow BBC journalists to use their news judgement when making editorial decisions about election coverage. She said this was a clear example of the programme makers using such judgement, which stood irrespective of the fact that the Respect Party was fielding a similar number of candidates as the SLP.

The Senior Editorial Strategy Adviser noted that the complainant did not take issue with the explanation offered by the BBC for the inclusion of the Respect Party. She said that she did not believe that the appeal stood a reasonable prospect of success on this point.

With regard to the complainant's question about why the BNP and English Democrats were included in the report, the Senior Editorial Strategy Adviser noted the BBC's argument that the decline in fortune of the BNP from previous local elections was judged to be an appropriate element of the story, with the script reflecting how the BNP had modest hopes at this election and their leader saying that this was a rebuilding phase after an internal power struggle. In relation to the English Democrats, the Senior Editorial Strategy Adviser noted the BBC's justification that, while the English Democrats had broadened their message, campaigning for tax cuts, more directly elected mayors, as well as an English parliament were issues which meant their campaign had some topicality. Both parties were also fielding more candidates than the SLP in England in May 2012.

The Senior Editorial Strategy Adviser understood that the SLP was not included in the report because the scale of its political ambition at the 2012 election and the evidence of previous electoral success did not merit it. She said that in trying to gauge the significance of smaller parties, the Election Guidelines directed journalists to consider previous electoral support and also suggested that opinion poll support should be considered. She noted that the local elections in England in May 2012 were taking place across 128 councils and, in total, 2,412 seats were being contested. The Local Elections Handbook 2012 showed that the SLP put forward a total of 11 candidates in England. It fielded candidates in less than 0.5% of the available seats. As a comparison, the BNP fielded 132 candidates and the English Democrats 90.

The Senior Editorial Strategy Adviser also understood that the SLP was too small to ever have had a presence on any national opinion poll. The local elections in England in 2011 were on a far larger scale than those of 2012 and could be used to gauge whether the SLP was a significant political force. Out of a total of 9,460 seats being contested, the SLP fielded eight candidates and in total they received just over a thousand votes between them. This supported the conclusion that the SLP did not have the level of support to warrant being included in the report and nor was it standing in enough seats to make it relevant to many viewers. The Senior Editorial Strategy Adviser added that, although the complainant referred to the elections in Wales and Scotland as evidence of the SLP's growing support, this was a report that was specifically about England.

The Senior Editorial Strategy Adviser took the view that she had not seen any evidence to suggest that the journalists were either not following the Editorial Guidelines or failing to work within the Election Guidelines. She did not consider therefore that the appeal stood a reasonable prospect of success on this point.

The Senior Editorial Strategy Adviser noted that the complainant had suggested that the BBC never intended to refer to the SLP and he requested an apology for this. The Senior Editorial Strategy Adviser considered that the evidence did not support that allegation and therefore there were no grounds for such an apology.

The Senior Editorial Strategy Adviser also noted that the complainant suggested that the BBC was trying to stunt the growth of the SLP. The Senior Editorial Strategy Adviser said that, in light of the reasons outlined above, the Committee would be unlikely to find that the editorial decisions taken had been made without due impartiality.

Finally, in relation to the failure of the BBC to refer to the complainant's forthcoming candidacy in the Cardiff South and Penarth by-election, the Senior Editorial Strategy Adviser said that this was a new complaint which must be addressed in the first instance by the BBC rather than the BBC Trust. She had therefore passed the complaint about this to BBC Wales for a response.

The complainant requested that the Committee review the decision not to proceed with the appeal. He expressed surprise that the results of the Scottish Parliamentary and Welsh Assembly elections were deemed to not be relevant to a story about local elections in England. He also pointed out that the level of candidates fielded by the BNP, English Democrats and Respect Party did not match the level set out in the Election Guidelines. It was difficult to see how the BBC could use a point about candidate levels as a way to justify including some political parties and not others, especially when the SLP fielded more candidates than one of the parties that was included.

The complainant also said that he was disturbed by the idea that journalists could use their own judgement when making editorial decisions about elections. This allowed institutional bias to creep in to what should be a transparent process. He said that if the BBC journalists who were making these editorial decisions genuinely thought that the English Democrats campaigned on issues that were more topical and important to the people of Britain than the issues on which the SLP campaigned, they were not living in the real world.

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 complainant had said that the number of candidates fielded by the BNP, the English Democrats and the Respect Party did not reach the level for the minimum of coverage as set out in the Election Guidelines. The Committee was mindful, however, that the BBC had not used the relative number of candidates fielded at the May 2012 elections to justify either the inclusion or exclusion of any particular parties from this news report.

The Committee agreed that the Editorial Guidelines and Election Guidelines should not be proscriptive but should offer a framework within which programme makers can use their editorial judgment. The Committee did not agree that enabling programme makers to use their judgment would necessarily result in a lack of transparency or impartiality, provided that their decisions could be editorially justified. Neither did the Committee agree that the decision not to include the SLP in this report indicated institutional bias. The Committee agreed that the BBC had provided editorial justification for the inclusion of the parties that had been featured in the report. The Committee noted the information provided by the Trust's Senior Editorial Strategy Adviser to the complainant and was satisfied that the

programme's justification for including the parties that it had was not inconsistent with the decision not to include the SLP.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on impartiality in relation to the complaint.

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

Match of the Day Live, BBC One, 18 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 to appeal against the decision of the Editorial Complaints Unit not to uphold his complaint about the following comment made by Gary Lineker during the coverage of a football match between Croatia and Spain on *Match of the Day Live* on 18 June 2012:

"Iker Casillas, couple of vital saves from him. But in the end, Jesus was the saviour."

The complainant said that Gary Lineker had made an offensive comparison between Jesus Navas, the scorer of the only goal for the Spanish football team against Croatia, and Jesus Christ. He said that Mr Lineker signed off the broadcast by saying that Jesus Navas was the saviour, or words to that effect. The complainant said that the joke was unnecessary and trivialised Christian beliefs about Jesus.

The complainant queried whether a similar pun would be made about another religion, in particular Islam. He said that Mr Lineker might be known for making cheesy jokes, but that did not mean they could not also be offensive. The complainant said that the ECU's decision not to uphold his complaint meant that Mr Lineker could continue to make jokes of this nature because, in its view, he had done nothing wrong.

In reply, the Trust's Senior Editorial Strategy Adviser explained that she had read the relevant correspondence and that an independent adviser had watched the programme in question. The Senior Editorial Strategy Adviser considered that the appeal did not have a reasonable prospect of success and therefore that it should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser considered the appeal against the Editorial Guidelines on Harm and Offence, and Religion. She said that the Guidelines required programme makers to balance the interests of people who had a particular sensitivity with those of a general audience who did not share that sensitivity. The Senior Editorial Strategy Adviser said that programme makers needed to take into account the content and context of the material when they were making their decisions, and research would influence their thinking in terms of what was "generally acceptable" to the audience.

The Senior Editorial Strategy Adviser explained that the BBC had already described some of the research which it used to gauge audience attitudes, and, therefore, to help determine what was generally acceptable, including research published by Ofcom in 2010, *Audience attitudes towards offensive language on television and radio*. This research suggested that the phrase "Jesus Christ" was considered generally acceptable, while in previous research carried out by Ofcom in 2005 the word "Jesus" was categorised as mild and generally not offensive (although attitudes shifted when it was used in conjunction with swearing). In the latest research, most participants considered that potentially offensive language was less acceptable when it was used aggressively, targeted towards an individual or used to mock an individual or group. However, potentially offensive language used as playful banter was more acceptable.

The Senior Editorial Strategy Adviser noted that Jesus Navas was the only goal scorer in the match and was, therefore, responsible for Spain's victory. The single goal provided safety for Spain, as they could have dropped out of the Euro 2012 competition if they had lost the match. On this basis, she considered that there was an editorial justification for Mr Lineker's comment and that it was a light-hearted play on words given the name of the Spanish goal scorer and the context of the match.

The Senior Editorial Strategy Adviser also noted that at the end of the programme Mr Lineker made a further play on the footballer's name by saying the result was "Navas in doubt". She noted that he then grimaced and apologised, making it clear that he knew it was a poor play on words and so was intended as a joke.

The Senior Editorial Strategy Adviser acknowledged that humour was subjective and what one person found funny could leave another cold. However, taking into account the audience research and the requirement for programme makers to consider the response of their audience as a whole, she did not consider this appeal had a reasonable prospect of success.

The complainant requested that the Committee review the decision not to proceed with the appeal. He questioned whether the BBC's framework for regulating and monitoring its presenters was adequate and argued that offence caused need not be measured either by the number of complaints or by its fitting in with a form of words that may not be adequate. He went on to make the following points about the Senior Editorial Strategy Adviser's response:

- It was not remotely sensitive for Mr Lineker to compare saving Spain from going out of a tournament with "saving from sin for eternal life with God".
- Mr Lineker's comment was unjustifiable offence because the reference to Jesus served no purpose in the commentary or summation of the match. The point could have been put pithily and wittily without any Christian reference.
- The question of balance was irrelevant. An offensive comment about a Christian belief was not outweighed by the lack of concern about this from most of the viewing public.
- The Senior Editorial Strategy Adviser's use of words such as "generally", "most" and "less" indicated that not all found the words "Jesus Christ" mild or acceptable. Most did but others did not. The complainant assumed that the BBC did not always rely on the number of complainants in order to uphold a complaint. If so, his complaint was worthy of presentation to the ESC.
- Mr Lineker's "joke" was in a footballing context in which a Christian might not have expected an offensive comment. Presumably a similar joke about Islam would also be justified under Ofcom research as "playful banter".
- The number of people who were sensitive about the use of particular words might be considerable, even if "most" were not, and this was not necessarily shown by the number who complained. Was it acceptable for the BBC to offend them?
- It was not necessarily correct that Mr Lineker's first "joke" should be seen in the light of his second. The second "joke" might have been intended to defuse criticism of the first.

- While Mr Lineker's comment may have been "playful banter" or a "poor joke", it was still possible for these to be offensive.

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 in question.

The Committee noted that the complainant had been offended by the comment made by Gary Lineker. It also accepted that there were likely to be others who were offended by this comment. It noted his comments on the research which indicated to him that there were those offended by the use of the word "Jesus". It accepted that it is possible to have breached the Guidelines even if only one person complains (and that there might have been those who were offended but did not complain) and conversely that it is not necessarily the case that the Guidelines have been breached even if many complain. The Committee noted the complainant's concern that offence would be tested against general views on offence but was mindful that in considering whether the comments had breached the Editorial Guidelines it would need to take into account "generally accepted standards". The concept of generally accepted standards is set out in the Communications Act of 2003 and the Agreement accompanying the BBC Charter requires the BBC to apply "generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material". This requirement is necessarily and correctly reflected within the BBC's Editorial Guidelines.

The Committee noted the complainant's reference to the Guidelines which requires the BBC to be "aware of the religious sensitivity of references to, or uses of, names," and that such references must be editorially justified and within generally accepted standards. Having viewed the material in context, the Committee was satisfied that the joke, regardless of its quality, was editorially justified, was within generally accepted standards and was not intended to cause offence to Christians or denigrate Christianity in any way. The Committee agreed that the joke relied on a contrived mispronunciation of the player's Spanish name; however, this was in keeping with the nature of such puns and it was not a significant factor in deciding whether the comment had breached Editorial Guidelines.

The Committee noted the complainant's comparison with a hypothetical situation where another religion had been involved. It did not agree that this was a useful analogy given that the question before it was whether the comment that had been broadcast was in breach of the Editorial Guidelines.

The Committee regretted that the complainant had been offended by this comment, but it agreed that the complaint would not have a reasonable prospect of success on appeal taking into account the light-hearted nature of the comment and the research on generally accepted standards.

For the reasons set out above, the Committee concluded that there was no reasonable prospect of it deciding that the programme had breached the Editorial Guidelines on harm and offence or religion in relation to the complaint.

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