

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 bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

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 will consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

9am News, BBC Radio 4, 21 May 2011

The complainant said that the Radio 4 9am News bulletin had been inaccurate and misleading in reporting that Prime Minister Netanyahu had told President Obama that Israel would never pull back to its "1967 borders". The complainant said that neither Prime Minister Netanyahu nor President Obama had referred to the pre-1967 armistice lines as borders.

The Committee concluded:

- that the further away the events of 1967 become, the more natural is the use of the word "border" – even if these are not borders in strict international law.
- that, while it endorsed the BBC's acknowledgment that the more accurate term "lines" would have been better on this occasion, the use of the generally well-understood word, "borders", in this context, would not have materially misled listeners with regard to the underlying story.

The complaint was not upheld.

For the finding in full see pages 7 to 12.

"Obama insists 1967 'basis' for Israel-Palestinian peace", BBC News Online

The complainant said that a BBC News article, which was based on a BBC interview with President Obama which had taken place shortly after the president gave a wide-ranging speech, was inaccurate and would have misled readers regarding US foreign policy. In particular, the complainant said that it was misleading for the article to use the words "must" and "insists" when reporting the speech which the president had given prior to the BBC interview, which he said were more prescriptive than the language actually used by President Obama. The complainant also said that the use of the term "border" was inaccurate in this context and had deliberately not been used by Mr Obama in his speech on foreign policy.

The Committee concluded:

- that, as the president himself had referred to the "1967 borders" in his BBC interview – though as the complainant pointed out not in his speech – it was duly accurate for the online team to refer to that in the introduction to a report which focused on the BBC interview rather than Mr Obama's speech.
- that the word "border" is used commonly to describe these boundaries and that, as this was not an article specifically about "borders", the word could be used with due accuracy.
- that the use of the word "must", taken in conjunction with the word "insists", in the headline and introduction of the article, was too strong in the context, was not presented in "clear, precise language", and was therefore not duly accurate.

The complaint was upheld in part.

For the finding in full see pages 13 to 19.

News at Ten, BBC One, 12 August 2011

The complainant said that in a news report about a child who had appeared at a youth court, the BBC had broken the law prohibiting the broadcast of images of children who are subject to criminal proceedings (section 49 of the Children and Young Persons Act 1933). The complainant said that the report had also breached the BBC's Editorial Guidelines relating to Children and Young People as Contributors, Reporting Crime and Anti-Social Behaviour, and The Law. The complainant also said that the BBC had failed to obtain consent to show the footage and in doing so had breached the guidelines on Fairness and Privacy.

The Committee noted that it was not within its remit to determine points of law, but that one of the Trust's functions was to hold the Executive Board to account for the BBC's compliance with the general law.

The Committee concluded:

- that, despite the measures taken by the BBC to obscure the child's and accompanying adults' identities, the child may have been identifiable to those who knew him well.
- that, having determined that the child was identifiable from the report, the BBC had failed to comply with the Children and Young Persons Act 1933.
- that given the legal restrictions, it was not editorially justified to broadcast the pictures in which the child was identifiable. As such, the BBC had breached the Editorial Guidelines regarding the identification of the children involved in court proceedings and/or criminal behaviour.
- that the BBC News team had not considered that it was broadcasting material which could lead to identification; did not consider that it was proposing to break the law; and did not have a query about the law. As such, there had been no breach of the Editorial Guidelines which require legal advice to be sought. However, the Committee expressed its concern that the BBC had not taken the view that the child was identifiable.
- that the filming of the pursuit and questioning of the child by another media channel did not constitute a failure by the BBC to protect the physical and emotional welfare and dignity of the child, nor did the BBC cause the child unnecessary anxiety or distress in this respect. In addition, the BBC filming of the pursuit and questioning of the child by other media outlets did not constitute bullying or harassment by the BBC, and in filming the pursuit there had not been a breach of the Editorial Guidelines to safeguard the welfare of children and young people.
- that, although there had not been a breach of the Editorial Guidelines in gathering the information for the report, there had been a breach of the Editorial Guidelines in broadcasting the pursuit and questioning.
- that, in practice, the Committee does not consider third party complaints about fairness and privacy. As neither the mother nor the child had made a complaint, the Committee would not consider the complaint against the Guidelines on

Fairness and Privacy.

- that the automatic reporting restrictions override any consideration about whether to obtain consent. The BBC's error had been to broadcast a report in which the child was identifiable and there had not been a breach of any requirement to obtain consent.

The complaint was upheld in part.

For the finding in full see pages 20 to 32.

Stage 2 complaint handling

The complainant appealed against the Editorial Complaints Unit's decision not to investigate further specific allegations of breaches of the Editorial Guidelines relating to a single programme (*The Future State of Welfare*) beyond those which it had received from him within the time limit for a complaint at Stage 2 of the process. The complainant also said that the ECU should consider the accuracy of the programme as a whole.

The Committee concluded:

- that while it was undesirable to have an open-ended opportunity for raising complaints at Stage 1, the complainant in this case had set out the nature of his concerns at the outset and the replies at Stage 1 had not directly addressed his general complaint or the specific factual inaccuracies which he had alleged.
- that it is appropriate for the BBC to consider specific allegations of inaccuracy and that it is for the ECU to come to any relevant conclusions with regard to the causes and remedies should any specific example be upheld.
- that the ECU should not consider an allegation of general inaccuracy separate from specific examples provided by the complainant.
- that the complainant was not aware at the time of making his Stage 1 complaint that any further examples of alleged inaccuracy would not be considered or that his general complaint would not be considered.
- that it would be appropriate for the complainant to be given the opportunity to put forward his additional points of complaint for consideration.

The complaint was upheld.

For the finding in full see pages 33 to 37.

Application of expedited complaints procedure at Stage 3

The Committee considered a complainant's challenge to the decision of the Head of Editorial Standards to apply the expedited handling procedure to appeals from the complainant which contain "allegations against the BBC's output regarding race or nationality and complaints which threaten action against BBC staff and complaint handlers".

The Committee concluded that the expedited procedure should not be applied at this time, but that the complainant should be advised that any further unsuccessful complaints

which fall within the expedited procedure criteria, as outlined by the Head of Editorial Standards, would strengthen the case for it being applied in the future.

For the finding in full see pages 38 to 39.

Appeal Findings

9am News, BBC Radio 4, 21 May 2011

1. Background

The complainant said it was inaccurate and misleading to report that Prime Minister Netanyahu had told President Obama that Israel would never pull back to its "1967 borders". President Obama had said for the first time that peace talks should be based on a future Palestinian state based on the boundaries that existed before the 1967 Arab-Israeli war.

The 9am Radio News bulletin reported on a meeting in Washington between US President Barack Obama and Israeli Prime Minister Benjamin Netanyahu where Mr Netanyahu rejected President Obama's call for peace with the Palestinians based on pre-1967 borders.

Mr Netanyahu said Israel was prepared to make compromises for peace but could not go back to the 1967 lines because these were indefensible.

The actual script was:

"The Israeli Prime Minister Benjamin Netanyahu has told Barack Obama in Washington that Israel will never pull back to its 1967 borders, as laid out in the president's blueprint for a Palestinian state. Mr Netanyahu said Israel would not be able to defend itself."

2. The complaint

Stage 1

The complainant wrote to BBC Audience Services on 21 May 2011. He said that the radio piece was inaccurate because neither Prime Minister Netanyahu nor President Obama had referred to the pre-1967 armistice lines as borders.

The complainant said the 1949 armistice line between Israel and Jordan was not a border and the border was to be negotiated in peace talks. By calling the armistice line a border, the news bulletin had made it appear that the line had a legal significance which it did not and had never had, and that by implication Israel's reluctance to accept it as a border was an example of Israeli refusal to accept international law, whereas the opposite was in fact the truth.

BBC Audience Services replied to the complainant on 9 September 2011 and said they had raised the issue with the relevant editorial team who said they did not agree that referring to the "1967 borders" was inaccurate.

The editorial team had said the state of Israel, as recognised by the United Nations and the international community, was Israel minus the territories occupied in 1967 – the West Bank, Gaza and the Golan Heights and this was where the term came from.

The editorial team said it was the standard term used in journalism and diplomacy to refer to these lines, frontiers or borders, even though the Green Line and the ceasefire line that demarcated what was now Gaza were not recognised international borders.

The editorial team added that the Foreign and Commonwealth Office and the US State Department used the phrases "1967 borders" or "borders of 1967".

In the complainant's reply to BBC Audience Services, he said there had not been an agreement by the UN on where the borders of Israel lay. He added that although it was beyond dispute that Israel had been governed from West Jerusalem since long before the 1967 war many UN member states did not recognise Jerusalem as the capital of Israel.

The complainant added that it was not official US State Department policy to refer to 1967 borders even though their officials sometimes made mistakes on their websites.

The complainant concluded by saying that it was a definite fact that Mr Netanyahu would never refer to the 1949 Armistice line as pre-1967 borders and he had not done so in May as the radio news bulletin had reported. President Obama had also not made this reference.

The editorial staff at BBC News said they believed it was fair to say that it was now common practice in political and journalistic circles to refer to the (pre-) 1967 borders as such. But, they added:

"In this instance however, we do recognise that the report in question could have been clearer in identifying what Netanyahu and Obama said with specific regard to borders and recognise that the term should not have been used on this particular occasion."

Stage 2

The complainant wrote to the ECU, the second stage of the BBC's complaints procedure on 24 December 2011 and said he appreciated the comment from the editorial team at BBC News that the term borders should not have been used to refer to the 1949 armistice lines.

However, the complainant said that he was appealing to the ECU because the reply from BBC News suggested that it was normal and perfectly acceptable journalistic practice in most cases to refer to the armistice lines as the (pre-) 1967 borders, when this was not the case.

He said that the 1949 Armistice Line was not, and had never been an international border. The agreement stated explicitly that the line simply reflected the positions of both sides' forces at the time the armistice was signed.

The ECU replied to the complainant in full on 30 January 2012 and said the complaint was considered in relation to the Editorial Guidelines, in particular the guideline on Accuracy. The complaint was not upheld on the following grounds:

The ECU said the editor of the bulletin had already acknowledged that the word "border" should not have been used on this particular occasion. The ECU added that in their view, it would have been better if the report had not referred to "borders" to guard against the possibility that listeners could have assumed that the word had been used by Mr Netanyahu or in President Obama's blueprint. The ECU added it would have been better if the report had made clear that the reference was to the boundaries in place before the 1967 Six Day War.

The ECU said that the complainant had suggested that the term "border" in this context indicated that the 1949 Armistice Line was an internationally recognised border and that its use would have led audiences to understand that there had previously been international recognition or acceptance of the extent of the State of Israel when no such recognition had ever been reached. The ECU said it was the case the word was rarely, if ever used in diplomatic language in this context.

But the ECU added that in a brief news report, it believed it was reasonable for journalists to use language which was easily understood by a general audience. The ECU said it did not believe the word "border" had the specific technical definition the complainant suggested when in everyday use and it did not consider that listeners would have assumed it had a specific meaning in the context of a brief news summary.

The ECU said that most listeners would have understood it to refer to the point at which one side's territory ended and another's began at that specific point in time.

The ECU added that even if listeners had wrongly assumed that it had been used by Mr Netanyahu, it did not believe that would have changed their fundamental understanding of what he said, which was that Israel would not accept a return to the areas which were geographically occupied by Israel before the 1967 war.

Appeal to the Trust

The complainant appealed to the Editorial Standards Committee (ESC) of the BBC Trust – the third and final stage of the BBC's complaints procedure – on 30 January 2012.

The complainant said that the 1949 Armistice Line was not and had never been an international border, nor had there been any treaties that had recognised the 1949 Armistice Line as an international border. He added that for it to become an international border the nations concerned would have had to sign an agreement to that effect and they had not done so. In this case the borders had to be determined in peace talks between Israel and the Palestinians and that had not yet happened and when it did happen it was extremely unlikely the border would be the 1949 Armistice Line.

The complainant concluded it was for this reason that it was not only inaccurate in this case to refer to the 1949 Armistice Line as an international border but it would always be the case.

There was a further exchange about the meaning of "border" between the ECU and the complainant. The result was that the complainant wrote again to the Trust on 1 February 2012 to confirm his appeal and added that the bulletin had "materially misled" the public.

The complainant said that using the word "borders" in this item, when it had not been used by those mentioned, was inaccurate and might materially mislead the audience.

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.

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

The Committee considered whether the Accuracy guideline had been breached in light of the complainant's allegation that it was inaccurate and a breach of the guidelines to use the word "borders" when reporting the discussion between President Obama and Prime Minister Netanyahu about the president's proposals for peace in the Middle East. In particular:

1. Was the content presented in "clear, precise language"?
2. Has the BBC knowingly and materially misled its audiences with its content?
3. In particular did it undermine the audience's trust in the BBC's content?

The Committee noted that the complainant said that it is inaccurate and may be misleading for Radio 4 bulletins to use the word "border" when discussing the lines between Israel and the West Bank and Gaza. The Committee noted the complainant's view that false perceptions about these lines led to resentment against Israel.

The Committee noted that the Head of Editorial Compliance & Accountability, BBC News, responded that she was clear both that the BBC had acknowledged that a better word would have been "lines" and that the complaint was not upheld by the ECU:

"The Newsroom view is that the context here was that both Mr Netanyahu and Mr Obama took care not to refer to 'borders'. But the script might be understood by listeners as suggesting that Benjamin Netanyahu had used this exact phrase (whereas, of course, it was simply trying to précis his words and make them explicable to a general audience). A more accurate script might, however, have recognised the sensitivities of ascribing this phrase to him and would not have used this word – in this particular instance.

"In other circumstances, where the context is not one where we are attributing remarks, we think it may be appropriate to refer to 'borders'; it is now common parlance in political and journalistic circles to talk about the (pre-) 1967 borders and it would be curious if we remained totally detached from the way language has evolved."

The Committee noted that the BBC Governors' independent panel report on the impartiality of BBC coverage of the Israeli-Palestinian conflict (2006) recommended that

the BBC should make public an abbreviated version of its journalists' guide to facts and terminology. This is what it says on the issue:

GREEN LINE

"The Green Line marks the boundary between Israel and the West Bank. It is properly referred to as the 1949 Armistice Line – the ceasefire line of 1949.

The exact borders of Israel and a future Palestinian state are subject to negotiation between the two parties. The Palestinians want a complete end to the Israeli occupation of the West Bank, Gaza Strip and East Jerusalem, and use the phrase to mean a return to the pre-4th June 1967 borders.

In describing the situation on the ground take care to use the most precise and accurate terminology.

The Green Line is a dividing line or a boundary. If you call it a border you may inadvertently imply that it has internationally recognised status, which it does not currently have.

To that end, we can call the Green Line 'the generally recognised boundary between Israel and the West Bank.'"

The Committee noted that its independent editorial adviser had looked specifically at other news outlets which could be expected to be alert to the sensitivities on this issue. Only Fox News reported the matter as the complainant suggests the BBC should have done:

"Obama on Israel, Palestine: Borders Should Be Based on 1967 Lines

In a speech on the Middle East Thursday, President Obama gave what was to some an unexpected stance on the Israeli-Palestinian conflict in stating that the United States believes the borders for the two countries should follow 1967 lines."

But the Committee noted that the respected Israeli newspaper Ha-aretz used "borders" as well as quoting correctly the use of the word "lines" by President Obama:

"Obama's vision for Mideast peace: Israel, Palestine based on 1967 borders with land swaps

U.S. President Barack Obama said Thursday that the U.S. endorses the Palestinians' demand for their future state to be based on the borders that existed before the 1967 Middle East war.

'The borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states,' Obama stressed during a major Mideast policy speech at the State Department."

And the Committee also noted that the American network, ABC had "borders" in its headline, "lines" in the online piece and both interchangeably in its TV piece:

"Obama Speech Backlash on Call to Reinstate 1967 Mideast Borders President Obama's call this afternoon for Israel and the Palestinians to redraw boundaries based on 1967 lines has already generated backlash."

while the New York Times depends wholly on “borders”:

“Obama Sees ‘67 Borders as Starting Point for Peace Deal

...A day before the arrival in Washington of Prime Minister Benjamin Netanyahu of Israel, Mr. Obama declared that the prevailing borders before the 1967 Arab-Israeli war – adjusted to some degree to account for Israeli settlements in the West Bank – should be the basis of a deal. While the 1967 borders have long been viewed as the foundation for a peace agreement, Mr. Obama’s formula of land swaps to compensate for disputed territory created a new benchmark for a diplomatic solution.”

The Committee considered whether the acknowledged looseness of language in the 9am Radio 4 news bulletin was serious enough to be a breach of the Editorial Guideline which requires “clear, precise language” and Committee members discussed whether, when writing a three-line story for a bulletin, it was incumbent on the BBC to make the distinction between a border (an internationally agreed frontier) and a line (the outcome of a ceasefire or drafting).

The Committee noted that few other major news outlets maintain that distinction throughout their output, and it discussed what the requirement for “due accuracy” means in this context for the BBC.

The Committee agreed with the Newsroom response that:

“it is now common parlance in political and journalistic circles to talk about the (pre-) 1967 borders and it would be curious if we remained totally detached from the way language has evolved.”

The Committee therefore concluded that this was not a breach of the editorial guidelines.

The Committee considered that the further away the events of 1967 become, the more natural is the use of the word “border” in this context – even if these are not borders in strict international law.

The Committee did not think this report could be said to breach the Editorial Guideline which forbids the BBC from “knowingly and materially misleading its audiences” or undermining the audience’s trust in the BBC.

The Committee considered that the use of a generally well-understood word, “borders”, in this context would not have materially misled listeners with regard to the underlying story, although it endorsed the BBC’s acknowledgment that the more specifically accurate term “lines” would have been better on this occasion.

Finding: Not upheld.

“Obama insists 1967 ‘basis’ for Israel-Palestinian peace”, BBC News Online

1. Background

An article headlined: “Obama insists 1967 ‘basis’ for Israel-Palestinian peace” was posted on 19 May 2011 – in the period between Andrew Marr recording an interview with President Obama and its transmission on the Andrew Marr Show. The interview happened soon after President Obama had given a wide-ranging speech on foreign policy. The interview as broadcast was also wide-ranging. The online article was based on a small part of the transmitted interview.

The complainant says the online article inaccurately reported what the president said – particularly in its headline – and that this would have misled readers.

2. The complaint

Stage 1

The complainant wrote to BBC Audience Services on 20 May 2011. He complained that a BBC News Channel bulletin and the related BBC News Online article said (emphasis added):

“... President Obama insisted that the 1967 border MUST BE the basis for negotiations to set up a future Palestinian state.”

He said that in the BBC interview, President Obama said that talks “... will involve LOOKING AT the 1967 border...” and in Obama’s actual speech the president said:

“The United States BELIEVES THAT... the borders of Israel and Palestine SHOULD be based on the 1967 lines.”

The complainant said that what President Obama had said was a lot less prescriptive than “... the 1967 border MUST BE the basis for negotiations to set up a future Palestinian state”.

He said the term “border” had legal significance and did not apply to the 1949 Israel-Armistice Agreement, the only international agreement that specified the “green line” (Israel Jordan Armistice Line), which was so-called because it was demarcated in green ink on the map that was integral to the agreement. He went on to say that the Armistice Line was not a border and the border was to be negotiated in peace talks:

“By calling the armistice line a border you make it appear that the line had a legal significance that it does not have and never had, and that by implication Israel’s reluctance to accept it as a border is an example of Israeli refusal to accept international law, while in fact the opposite is the truth.”

He concluded that it was of important legal significance that the 1949 Armistice Line between Israel and Jordan never was an international border and should not be referred to as if it is or ever was one.

BBC Audience Services replied and said that choosing the wording of headlines was a subjective matter and one which not every viewer would agree with. They added that headlines would generally include a very brief synopsis of the report with the detail in the full report. This was the case with the online report which had quoted President Obama directly both from his speech and interview.

The complainant replied to BBC Audience Services the same day, saying the complaint had not been just about the headlines but about the main article, and quoting from President Obama's speech:

"We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognised borders are established for both states. The Palestinian people must have the right to govern themselves, and reach their full potential, in a sovereign and contiguous state."

After a delay (for which apologies were supplied), BBC Audience Services explained why they were not upholding the complaint. They did not think the coverage had been inaccurate. They did not see the reference to the "1967 borders" as inaccurate. BBC Audience Services outlined the definition of "should" in the Oxford American Dictionary.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU), the second stage of the BBC's complaints procedure, on 19 August 2011. He said that the response suggesting a difference in meaning between "should" in US English and the same word in UK English was disingenuous. He said the US definition was almost identical to the New Oxford Dictionary of English, which in turn was almost word for word as the Oxford World English online definition. He quoted the meaning of "should" in the Oxford American Dictionary and said that the argument about the meaning of "should" was spurious.

The ECU replied on 19 August 2011. They said they considered the complaint to be firstly, that the article had misrepresented and overstated what President Obama had said when he had insisted on the 1967 border as a basis for peace. Secondly, that it was inaccurate to have said that Prime Minister Netanyahu had given "the go-ahead" for the building of new settlements despite President Obama having called for them to stop. Both complaints would be considered against the BBC guidelines on accuracy.

The ECU replied in full on 26 September 2011. The complaint was considered in relation to the Editorial Guidelines, in particular the guideline on Accuracy. The complaint was not upheld on the following grounds:

The ECU said it agreed that "should" and "must" were not synonymous. However, they did not believe that the word "must" or the word "insists" used in this context were so imprecise as to have the effect of mis-characterising what was said or giving a materially misleading impression of the position of the US government. The ECU said that a headline was "an attempt to distil the essence of a story" and that "in a story as complex as this ... a certain amount of paraphrasing is inevitable". The ECU said that if viewers had been in any doubt as to what was said, the full report made the precise details clear.

The ECU considered the BBC News online report which, as well as the word "must", also said that the president had "insisted" on the 1967 borders as a basis for negotiations. The ECU said it did not believe the BBC News online report misrepresented or overstated the president's position as it had also contained video of an excerpt from the interview, several direct quotes and analysis as well as a full transcript of the interview.

Appeal to the Trust

The complainant appealed to the BBC Trust regarding the contents – specifically the headline and introduction – of the online article. He said:

"The first sentence of the web article after the headline was 'US President Barack Obama has insisted that the 1967 *border (sic)* must be the "basis for negotiations" to set up a future Palestinian state.'"

The complainant compared this with some of what President Obama said in his speech, although the interview – which is what the article was reporting – was worded somewhat differently.

The complainant described what the president had said in his speech:

"He believed that the negotiations should result with the borders of Israel and Palestine based on the 1967 lines with land swaps, and that the Palestinians must have the right to govern themselves in an independent state."

The complainant went on to say:

"Clearly he was insistent that the outcome of such negotiations should be an independent state of Palestine, but equally clearly from the choice of word that he used, he was not so insistent that it should be based on the 1967 lines with land."

The complainant explained his view that US presidents did not put too much pressure on Israel in matters directly affecting long-term security, since if Israel felt under too much pressure at some point in the future they would simply refuse. The complainant suggested that Prime Minister Netanyahu would have been reassured when some days later the President made it clear that he was NOT insisting on the 1967 borders.

The complainant concluded:

"The article was both inaccurate and misleading when it said that Obama insisted that the 1967 'border' must be the basis for negotiations to set up a future Palestinian state."

The complainant argued that the words the president used in the speech – carefully drafted beforehand – should be taken as a better representation of US policy than any off-the-cuff remarks in an interview:

"In the interview Mr Obama outlined his proposal and while it was clear that his proposal was for talks on the basis of the 1949-67 Armistice lines it was also clear, when you look at what he said in the interview in the context of his speech that he was describing his proposal, not laying down the law.

"Mr Obama was advised by lawyers and State Department experts when his speech was written. When he spoke in the interview it was without the benefit of such advice. As a consequence his speech writers and advisers were careful NOT to use the word border when referring to the green line. In his interview Mr Obama did not have the benefit of such advisers and lawyers and almost certainly he used the word inadvertently. It was definitely the speech itself that set out his government's considered policy, rather than his off the cuff remarks in an interview. It was misleading to suggest that the USA considered the green line to be a border when the experts from the US administration so studiously avoided using the word in Mr Obama's speech."

The complainant's correspondence with the BBC Trust raised two issues:

1. Was the use of the words "insists" and "must" accurate and impartial?
2. Was the use of the word "borders" instead of "lines" accurate and impartial?

The complainant's appeal request was initially turned down by the Trust's Head of Editorial Standards on the basis that she did not consider that it had a reasonable prospect of success. The complainant appealed to the Trustees against this decision and the Committee decided that it did wish to take the complaint on appeal. The complaint was then investigated for the Trust by an Independent Editorial Adviser before being considered by the Committee.

3. Applicable Editorial Standards

The following sections of the 2010 Editorial Guidelines are applicable:

Section 3 – 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.

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.

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

The Committee looked at the article online. Committee members noted that on the same online page was a clip of the relevant part of the Andrew Marr show interview. Committee members also noted a link to other highlights and a link to a full transcript of the programme interview: <http://www.bbc.co.uk/news/world-us-canada-13464427>

The Committee considered, regarding the complainant's allegation that the headline and introduction were inaccurate, whether the Accuracy guideline had been breached. In particular:

- Whether the guideline on "due accuracy" was breached. Whether it was adequate and appropriate to its subject.

- Whether the headline was presented in “clear precise language”.
- Whether the headline “knowingly and materially misled the audience”.

The Committee noted that the online article was written in the context of an exclusive interview conducted by Andrew Marr with President Obama soon after the president had given a speech on foreign policy focusing on the Arab Spring and turning – after about 30 minutes – to the Israel/Palestinian problem.

The Committee further noted that Andrew Marr’s interview, conducted just days before the president was due to visit the UK, was over 20 minutes long as transmitted. The transcript of the full interview can be seen on a link from the article in question. The article was written after the recording on 19 May 2011 but before transmission on 22 May 2011.

The Committee noted the allegation that the headline and introduction in the article did not accurately represent what the president said and that there was a difference between the speech and the interview. In the speech Barack Obama had said:

“We believe the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognised borders are established for both states.”

The Committee noted that in the interview he said:

“the basis for negotiation will involve looking at that 1967 border, recognising that conditions on the ground have changed and there are going to need to be swaps to accommodate the interests of both sides”

The Committee noted that this last quote is the basis for the online article and that the complainant says that the writer should have given more weight to the speech – which does not refer to 1967 “borders” because:

“Mr Obama was advised by lawyers and State Department experts when his speech was written. When he spoke in the interview it was without the benefit of such advice. As a consequence his speech writers and advisers were careful NOT to use the word border when referring to the green line. In his interview Mr Obama did not have the benefit of such advisers and lawyers and almost certainly he used the word inadvertently. It was definitely the speech itself that set out his government’s considered policy, rather than his off the cuff remarks in an interview. It was misleading to suggest that the USA considered the green line to be a border when the experts from the US administration so studiously avoided using the word in Mr Obama’s speech.”

The Committee noted the response from the World Editor, BBC News online that the clip from the Marr interview would have been the basis for the article and that it came on the same day as President Obama’s speech on the Middle East “in which he raised the issue of using the 1967 lines as a basis for negotiations”.

The Committee noted that the World Editor added that the Obama speech – which had happened about five hours before the interview – was a big story for BBC Online:

“we streamed it live, updated the main news story many times, ran a live blog, had reaction from different quarters (including Benjamin Netanyahu) and a full transcript of the speech with analysis.”

The Committee also noted that the World Editor said that was the context in which the story and the headline was written and would have been read by BBC Online users:

“While Andrew Marr's interview was fairly wide-ranging, the clip that was made available for use on 19 May, ahead of the release of the full Marr interview, was about Mr Obama's stance on the 1967 lines issue. This is the video clip that is on the story and begins: “And the basis for negotiations will involve looking at the 1967 border, recognising that conditions on the ground have changed, and there are going to need to be swaps to accommodate the interests of both sides. That's on the one hand.”

The question Andrew Marr had posed was: “You can't have a little archipelago of Palestinian territory?”, which was a follow-up to the question: “In your speech on the Middle East you took the, to many people, surprising step of talking about the 1967 borders. Is that where America now stands?”

The intention of the headline was to convey the fact that Obama was insisting on 1967 borders as the basis for negotiations despite Israel having rejected the idea. I think all this is made clear in the body of the story.”

The Committee considered whether BBC Online, who were essentially reporting here on the interview between Andrew Marr and President Obama, accurately reflected what was said in that interview.

The Committee considered the following questions:

- Was it duly accurate to refer to the “1967 borders” rather than the “1967 lines” as the complainant prefers?
- Was it duly accurate to use the word “insists” as opposed to any other alternative?
- Was it duly accurate to use the word “must” as opposed to “should”

The Committee also considered the overall impression of the words taken together.

“1967 borders” rather than the “1967 lines”

The Committee considered that, given the president himself referred to the “1967 borders” in his interview – though as the complainant points out not in his speech – it was duly accurate for the online team to refer to that and to put it in the introduction to a report focusing on the exclusive interview rather than the speech, which had been covered elsewhere.

The Committee noted that very many other news organisations, such as the New York Times, Bloomberg, CNN, CBS, ABC and more, used the phrase “1967 borders”.

The Committee agreed that language is always changing and that in common parlance that is the way these boundaries are described. Committee members considered that, as this was not an article specifically about “borders”, the use of the word is not a legally bound term with a specific defined meaning and could therefore be used with due accuracy.

Use of the word “insists” as opposed to any other alternative

The Committee considered whether the word “insists/ed” was duly accurate in the context of the interview:

“Obama insists 1967 ‘basis’ for Israel-Palestinian peace

US President Barack Obama has insisted that the ‘1967 border’ must be the ‘basis for negotiations’ to set up a future Palestinian state.”

The Committee discussed whether this was properly explained in the body of the article. The Committee concluded that the headline was not couched in “clear, precise language”. While members did not think this would “knowingly and materially mislead the audience” they did consider that the headline would have been more measured and more accurate had it not used the word “insists”.

The Committee thought it unacceptable for the BBC to overstate the case in the headline even though the body of the item was wholly within the guidelines.

Use of the word “must” as opposed to “should”

The Committee finally considered the use of the word “must” and whether it was too forceful as the complainant asserted or an accurate representation of what the president was saying in this interview, which was the BBC’s contention.

The Committee concluded that the word “must”, taken in conjunction with the word “insists”, (above) was too strong in these circumstances and was therefore not duly accurate. The Committee reiterated that there was nothing wrong with the main part of the article – and that this breach of the editorial guidelines occurred purely in the headline and introduction to the article.

Finding: Partially upheld with regard to the combined use of the words “must” and “insists” in the headlines.

News at Ten, BBC One, 12 August 2011

1. Background

The *BBC News at Ten* broadcast on 12 August 2011 included a report about a child who had appeared at a youth court charged with an offence linked to the four nights of rioting and looting which occurred in August 2011. The report shows the child and an accompanying adult leaving the court and being questioned and pursued by the media as they run away across the street. It then shows the mother of the child leaving the court and being questioned and pursued by the media as she runs away. The child's face was obscured by the hood of his top, and the two adults' faces were blurred.

2. The complaint

Stage 1

The complainant wrote to BBC Audience Services on 13 August 2011 stating that it was unlawful to show any image of a child in such circumstances, whether or not their face was recognisable. He said that this error was compounded by the reporter and crew repeatedly asking the child for comment and chasing both him and his mother down the street.

BBC Audience Services replied to the complainant on 17 August 2011. They said that when reporting on children involved in criminal cases, BBC News was guided by the Children and Young Persons Act 1933 (the "1933 Act") and also editorial guidelines. They stated that BBC News is aware of the reporting restrictions where children are concerned and it takes all possible steps not to identify the individual concerned by disguising their image as well as their parent's image, as it is aware the image could lead to the identification of the child.

The complainant replied on 17 August 2011. He said he accepted that the images did not show the child's face, but he did not accept they were lawful because the 1933 Act deemed it unlawful to show any image of a child subject to legal proceedings. The complainant added that the law existed to protect children from identification and the pressures that would result from being photographed.

BBC Audience Services replied to the complainant on 26 August 2011. They said the primary purpose of BBC News had been to ensure that the child in question was not identifiable. They added that other broadcasters had also pixelated images of the child and other juvenile defendants. They also pointed out that the child's mother had also agreed later to an interview with the reporter.

Stage 2

The complainant wrote to the Director, BBC News, on 1 September 2011. The complainant said he accepted that the child's face was pixelated but the law stated that no image of a child should be shown. The complainant said that this was because the image could lead to the identification of the child even if the face was not visible and it was also inappropriate that children were subjected to the stress of being photographed by the press in relation to court proceedings. The complainant added that it was a serious misjudgment for the reporter to fire questions at the child and his mother in a public place as well as chasing them down the street in pursuit, and the decision to broadcast this was an error of judgment. The complainant said he could think of few circumstances that could be more aggravating of the above offence. Any subsequent agreement with the mother for an interview was irrelevant to the situation.

The Head of Editorial Compliance and Accountability, BBC News replied to the complainant on 8 September 2011 and said his complaint had been passed to the Head of the BBC Newsroom.

The Head of the BBC Newsroom replied to the complainant on 28 September 2011. She said the child's face had been pixelated¹ and no complaint that he had been identified in the report had been received from him or anyone on his behalf.

However, the Head of the BBC Newsroom accepted that the boy and his mother could still have been identifiable to those who knew them well, despite the measures that were taken. She also acknowledged that there were other ways that individuals could be identified than merely their faces but added that each case needed to be considered individually.

The Head of the BBC Newsroom said that there were occasions, even though few in number, when it would be appropriate to put questions to juveniles who were the subject of court proceedings (she later clarified that it would only be acceptable to put questions to juveniles on very rare occasions). She added that on this occasion, the question was directed primarily at the child's mother, as many observers had questioned why parents had not done more to ensure their children did not get into trouble.

The Head of the BBC Newsroom went on to state that the restrictions in section 49 of the 1933 Act should not be interpreted to mean no pictures whatsoever.

Appeal to the BBC Trust

The complainant appealed to the Committee stating that:

- Images of children subject to criminal proceedings had been broadcast and that this was unlawful in terms of the 1933 Act.
- Questioning a 13-year-old boy and his mother in a public place whilst on camera was a serious departure from proper editorial standards.

He said that the BBC had:

- broken the law prohibiting the publication of such images
- contravened its own guidelines (Editorial Guideline 18.9.2)
- fallen short of proper editorial standards by directing questions at the child
- obtained no prior parental consent, with the possibility of causing the child unnecessary anxiety and distress (Editorial Guideline 9.2.2)
- identified the child as the subject of criminal proceedings to anyone in the area.

He stated that the public interest was not served by the broadcast which revealed information useful for the greater understanding of the issue. It did not outweigh the child's expectation or right to privacy.

He also said that the Stage 2 response was inadequate:

¹ In fact, the face of the boy was obscured by the hood of his top; and the face of the adult with the child, and the face of the mother, were blurred.

- It emphasised that steps had been taken to disguise the identity of the child concerned but accepted that identification would still be possible.
- It sought to justify the child’s questioning substantially on the basis that no complaint was received by or on behalf of the child. The complainant did not consider this a relevant justification.
- The complainant did not accept that the restrictions in section 49 of the 1933 Act should not be interpreted to mean no pictures whatsoever.

The complainant asked whether there was a precedent for broadcasting a child’s image in similar circumstances. He also asked whether specific legal advice was sought prior to the broadcast.

In relation to his complaint that the report was unlawful, the complainant pointed to Editorial Guideline 18.9.2 and noted that similar guidelines are stated in BBC College of Journalism. He also attached an article by Shauneen Lambe (Britain’s Children: Breaking with Convention by Shauneen Lambe, Just for Kids Law.)

With regard to the complaint that the BBC had breached editorial standards, the complainant asked the Committee to consider: Rule 1.28 and 1.29 of the Ofcom Broadcasting Code, Editorial Guideline 9.4.12, and the following paragraphs from the Editorial Policy Guidance Notes:

- “The interests and safety of children and young people must take priority over any editorial requirement.”
- “Think carefully about each child’s privacy – we should pay particular attention to the expectations of privacy for under sixteens. Parental and child informed consent should normally be gained if a contributor is to be featured in our output in a way that would infringe their privacy.”
- “A child should never be made to feel uncomfortable in any way. Make sure that the child and young person continues to feel comfortable with their participation throughout. You should respect their wishes if they change their mind. Never engage in or endorse any bullying or harassment of a child. Make sure you do not use inappropriate language in front of a child.”

4. Applicable Editorial Standards

The following editorial guidelines were considered in relation to this complaint:

Section 18 – The Law

18.2.2

Any proposal to break the law must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards.

18.8.1

There are a number of other situations in which reporting restrictions either apply automatically, or can be specifically ordered by a court.

Automatic restrictions apply to:

- reports of preliminary/committal proceedings in magistrates' courts in England. We can only report certain very basic details
- reports of proceedings in youth courts (see below)
- proceedings under the Children Act. We must not broadcast anything which is likely to identify any child as being involved in such proceedings.

These restrictions can be lifted or varied by a court.

Some of the more common reporting restrictions which may be ordered include:

- Section 39 Orders, preventing the identification of under-18s involved in proceedings before an adult court
- Postponement Orders, preventing publication of reports of proceedings until after the conclusion of related proceedings or until the court lifts or varies the restrictions
- Anonymity Orders, where the court has allowed a person's details to be withheld, for example in blackmail cases.

Note that any queries involving legal proceedings in Scotland should be referred to the BBC Principal Solicitor, Scotland.

18.9.1

Programme Legal Advice should be consulted whenever there are queries about the law as it affects children.

18.9.2

In England, Wales and Northern Ireland people accused of committing offences while under 18 are usually dealt with in youth courts. In Scotland, a young person accused of criminal behaviour is treated as an adult from the age of 16, except in children's hearings.

(See Section 18 The Law: 18.9.4)

In youth court proceedings, there is an automatic ban on anything which might lead to the identification of a witness, defendant or other party in those proceedings who is under 18.

This includes a prohibition of giving the name, address or school, as well as the use of pictures.

In other courts, there is no automatic restriction but the court can make an order preventing identification of a child involved in the proceedings.

The restrictions for youth courts also apply to Children's Panel/Referral cases.

Section 8 – Reporting crime and anti-social behaviour

8.1

Our coverage of crime and anti-social behaviour is part of the BBC's public purpose and is aimed at giving audiences the facts in their context. However, we must ensure that the public interest in our reporting is not outweighed by public concern about our methods. We must ensure that we observe appropriate standards of behaviour ourselves, consider the consequences of our actions and avoid obstructing the work of the authorities.

Our reporting must not add to people's fear of becoming victims of crime if statistics suggest it is very unlikely.

8.3.19

Programme Legal Advice must be consulted before broadcasting material relating to the identity of anyone under 18 involved as a potential defendant once court proceedings have commenced.

(See 8.4.32)

8.4.32

A clear editorial justification is required for the broadcast of material related to the identity of anyone under 18 who is involved as a potential defendant in a court case before proceedings are commenced. There may also be legal restrictions once proceedings are active. Where there are active proceedings Programme Legal Advice must also be consulted.

(See Section 18 The Law: 18.9)

8.4.33

When considering whether or not to identify children and young people involved in anti-social or criminal behaviour, we should take due account of their interests. Consideration should be given to the age of the child or young person, the nature or seriousness of the behaviour and the possible consequences of identification. We should not normally identify children when featuring such behaviour to illustrate a practice, unless there is a clear editorial justification. Always seek advice from a senior editorial figure, or for independents the commissioning editor, if you are unsure how to proceed.

(See Section 9 Children and Young People as Contributors: 9.4.12 - 9.4.23 and Section 6 Fairness, Contributors and Consent: 6.4.2)

Advice on the identification of a child or young person with an Anti-Social Behaviour Order (ASBO) or involved in court proceedings is available from Programme Legal Advice.

Section 9 – Children and Young People as contributors

9.1

Children and young people are very important to the BBC. They contribute and interact with us in many different ways – as contributors, actors, presenters, through our interactive and user generated content, via all our services. We also aim to provide them with challenging, educative, enjoyable and interesting content and to help them make sense of the world in which they live. Ensuring the content children consume is appropriate is considered throughout the Editorial Guidelines and, specifically, in Section

5: Harm and Offence. This section is concerned with how we deal with children and young people who contribute to and interact with our content, whether or not it is aimed at children, or usually includes them as contributors.

We must always safeguard the welfare of the children and young people who contribute to our content, wherever in the world we operate. This includes preserving their right to speak out and to participate, as enshrined in the United Nations Convention on the Rights of the Child. The Ofcom Broadcasting Code obliges broadcasters to take "Due care ... over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes." (Rule 1.28, Ofcom Broadcasting Code.) This obligation is irrespective of any consent that might have been given by a parent or other adult acting in loco parentis. The Code also requires that "People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes." (Rule 1.29, Ofcom Broadcasting Code.) We are also subject to the law regarding children.

(See Section 18 The Law: 18.9)

For the purposes of the Editorial Guidelines and unless stated otherwise, a child is someone under the age of 15 years. Young people are those aged 15, 16 and 17. (Note: These definitions reflect the Ofcom Broadcasting Code which classifies "Children" as "people under the age of fifteen years".) "Parental consent" is normally required before involving anyone under 16 in our output. However, age may not be the only consideration.

(See Section 9 Children and Young People as Contributors: 9.4.14 - 9.4.19)

9.2.1

We must ensure that the physical and emotional welfare and the dignity of children and young people is protected during the making and broadcast of our content, irrespective of any consent given by them or by a parent, guardian or other person acting in loco parentis. Their interests and safety must take priority over any editorial requirement.

9.2.2

We must ensure that children and young people are not caused unnecessary anxiety or distress by their involvement in our output. Their involvement must be clearly editorially justified, consents should be obtained as appropriate to the circumstances of the child/young person and the nature of the contribution and output, and support should be given to them where necessary.

9.3.7

Any proposal to proceed with the contribution of a child or young person after a refusal of 'parental consent' must be referred to a senior editorial figure or, for independents, to the commissioning editor. Editorial Policy should also be consulted.

9.4.12

When featuring children and young people in our output we must obtain their informed consent, wherever possible, and respect any refusal to take part (unless there is a public interest that outweighs their expectations of privacy).

(See Section 6 Fairness, Contributors and Consent: 6.4.1 - 6.4.8 and Section 7 Privacy: 7.1)

In addition to the usual considerations for obtaining informed consent from the child/young person and, when necessary, any other person giving consent for their involvement, we must:

- ensure they understand the nature of the output
- ensure that any reasonably foreseeable consequences of the child's participation, such as the possibility of bullying, are made clear
- not give them any inducement to secure consent (although the payment of expenses is acceptable as long as they are reasonable and legitimate).

9.4.14

'Parental consent' means the informed consent of a parent, legal guardian, or other person aged 18 or over acting in loco parentis, such as a Head Teacher.

In addition to the informed consent of the child or young person themselves, we should normally seek 'parental consent' before interviewing anyone under the age of 16, or otherwise involving them in our output. An exception may be when recording vox pops with children on non-sensitive subjects, where it is not controversial for children to hold and express their views.

However, the younger and more vulnerable the child, and the more sensitive the subject matter, the more likely it is that 'parental consent' is essential. 'Parental consent' should normally be obtained if children are asked for views on matters likely to be beyond their capacity to answer properly.

9.4.22

When considering whether or not to identify children and young people involved in anti-social or criminal behaviour, we should take due account of their interests. Consideration should be given to the age of the child or young person, the nature or seriousness of the behaviour and the possible consequences of identification. We should not normally identify children when featuring such behaviour to illustrate a practice, unless there is a clear editorial justification. Always seek advice from a senior editorial figure, or for independents the commissioning editor, if you are unsure how to proceed.

(See Section 8 Reporting Crime and Anti-Social Behaviour: 8.4.32 and Section 6 Fairness, Contributors and Consent: 6.4.2)

There may also be legal reasons for not identifying a child or young person. If in doubt, consult Programme Legal Advice. Advice on the identification of a child or young person with an Anti-Social Behaviour Order (ASBO) or involved in court proceedings is available from Programme Legal Advice.

(See Section 18 the Law: 18.9)

Section 49 of the 1933 Act, which governs the reporting of Children and Young People concerned in youth court proceedings, is also relevant to this appeal.

5. 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. It also considered section 49 of the 1933 Act.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report, comments on the report from the complainant, and a legally privileged note of advice. Comments on the report were not received from the BBC Executive.

The Committee first considered its remit, and whether the child was identifiable. It then considered:

- the Editorial Guidelines regarding identification and whether the broadcast was lawful
- whether legal advice should have been obtained by BBC News
- whether BBC News acted within the guidelines in pursuing the boy and the adult with him and then pursuing the mother and asking questions of the mother as part of that pursuit.

Preliminary point – Committee's remit

The Committee noted that the complainant's main concern was whether the broadcast was unlawful. It noted section 49(1) of the 1933 Act which provides that:

- a) no report shall be published which reveals the name, address or school of any child (a person under fourteen years old) or young person (someone who is over fourteen but under eighteen years old) concerned in youth court proceedings or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings; and
- b) no picture shall be published or included in a programme service as being or including a picture of any child or young person concerned in youth court proceedings.

The Committee noted that it is responsible for determining appeals on BBC Editorial Standards. It agreed that it is not within its remit to determine points of law. As such, any view that it may form as to whether the BBC has acted in accordance with the law will not be determinative as to whether a breach of the 1933 Act has in fact occurred.

However, the Committee agreed that it may wish to express a view if it appears the BBC has acted unlawfully in this case, given that one of the Trust's functions is to hold the Executive Board to account for the BBC's compliance with the general law (Article 24(2)(f) of the Charter).

Preliminary point – Identification

The Committee first considered whether the child was identifiable from the BBC News report. It noted that the complainant felt that identification was a subsidiary and consequent issue to his main complaint. However, the Committee agreed that it was appropriate to first decide whether the child was identifiable before considering the Editorial Guidelines and whether the broadcast was lawful.

The Committee noted that the child was thirteen years old, and was filmed leaving a youth court, having been convicted for an offence linked to the summer riots. It noted that the BBC Correspondent had highlighted that efforts were made to obscure the child's identity and to prevent jigsaw identification: the adults' faces had been blurred, as well as

the reflections on the wall at the side of the court of the boy and the accompanying adults. It noted that the BBC Correspondent had highlighted that it was more diligent than other media channels in taking steps to obscure identities and prevent identification. However, the Committee also noted that the Head of the BBC Newsroom had accepted at Stage 2 that the child and his mother might still have been identifiable to those who knew them well. The Committee agreed that effective obscuring of identity sometimes requires more than the blurring of a face. The Committee agreed that, despite the measures taken by the BBC to obscure the child's and accompanying adults' identities, the child may have been identifiable to those who knew him well. In particular the Committee was aware that the gait, clothing, height and build of the child and the geographical location of the court (which was not given but would have been apparent to those who knew the area) added to his age which was given in the report combined with the gait, height, build, skin colouring, dress of the accompanying adults and voice of the child's mother would render him identifiable to family, friends and some in his neighbourhood.

Editorial Guidelines on identification and the law

The Committee considered the Editorial Guidelines regarding the identification of children involved in court proceedings (Editorial Guidelines 8.4.32, 8.4.33 and 9.4.22). It noted that these Editorial Guidelines highlight that there may be legal reasons for not identifying children involved in active court proceedings, or children involved in criminal behaviour.

The Committee noted that these Editorial Guidelines cross refer to section 18.9 (The Law). The Committee noted the legal restrictions set out in section 49(1) of the 1933 Act, and Editorial Guideline 18.9.2 which is a statement of the law as understood by the BBC:

“...In youth court proceedings, there is an automatic ban on anything which might lead to the identification of a witness, defendant or other party in those proceedings who is under 18.

“This includes a prohibition of giving the name, address or school, as well as the use of pictures...”

The Committee noted that even though the Guidelines on the identification of children involved in court proceedings are not explicit about the situation where a child has already been convicted in the youth courts, the law provides that the reporting restrictions set out in section 49(1) of the 1933 Act shall continue after conviction in a youth court unless the court orders otherwise.

The Committee agreed that, having determined that the child was identifiable from the report, in its view the BBC had failed to comply with the reporting restrictions set out in section 49 of the 1933 Act. Having reached this view the Committee did not consider it necessary to determine whether section 49 of the 1933 Act should be interpreted to mean no pictures whatsoever (whether or not the child is identifiable).

The Committee also considered that, given the legal restrictions, it was not editorially justified to broadcast the pictures in which the child was identifiable. As such, the BBC had breached the Editorial Guidelines regarding the identification of the children involved in court proceedings and/or criminal behaviour.

Finding: Upheld

Whether legal advice was sought

The Committee considered whether the BBC team should have obtained Programme Legal Advice prior to the broadcast of the report.

The Committee noted that the editor of the report had confirmed that no legal advice was sought prior to the broadcast. It noted that the reporter on the scene had flagged to the news desk that pictures of the child and adult would need treating before they were used in the report, and the team took the view that the steps that they took to obscure the identities were sufficient to prevent identification of the child and his mother.

The Committee noted that Editorial Guidelines 8.3.19 and 8.4.32 require that Programme Legal Advice be consulted when material is to be broadcast relating to the identity of anyone under 18 involved as a potential defendant once court proceedings have commenced, and also when proceedings are active. The Committee noted that Editorial Guideline 9.4.22 highlights that there may be legal reasons for not identifying a child or young person, and states that if in doubt programme makers should consult Programme Legal Advice.

The Committee also noted Editorial Guidelines 18.2.2 and 18.9.1 which require that Programme Legal Advice be consulted whenever there is a proposal to break the law, and whenever there are queries about the law as it affects children.

The Committee noted that the BBC had, in error, taken the view prior to transmission, that the child and mother were not identifiable from the report. It agreed that as such:

- the BBC team had not considered that it was broadcasting material which could lead to identification
- the BBC team did not consider that it was proposing to break the law (as it had believed that the steps it took to obscure identities were effective)
- the BBC team did not have a query about the law – it had understood there was an automatic restriction on using pictures which may lead to identification, and it had, in error, believed that the steps it had taken to obscure identities meant that it was complying with the law

The Committee therefore determined that there had not been a breach of the Editorial Guidelines which require legal advice to be sought. However, it expressed its concern that the BBC had not taken the view that the child was identifiable. It agreed that the BBC News Division would be required to consider: what steps are currently taken to ensure that pictures or other information which could lead to the identification of a child concerned in youth court proceedings are not included in BBC content; and the understanding of News staff on this issue. The Committee highlighted that the question of whether there is anything that renders a child identifiable in such a report should always be asked. The Committee also stressed the importance of the BBC News Division ensuring that the automatic reporting restrictions are understood, and Programme Legal Advice is sought whenever there is any query as to its application. It highlighted that the question of whether automatic reporting restrictions apply should always be considered, even when proceedings are no longer active. The Director of the News division would be asked to report back to the Committee on the outcome.

Finding: Not Upheld

Whether BBC News acted within the guidelines in pursuing the boy and the adult with him and then pursuing the mother and asking questions of the mother as part of that pursuit.

Gathering information for the report and broadcasting the report

The Committee next considered the complaint that the questioning and pursuit of the child and accompanying adult, and then the mother fell short of the BBC's Editorial Guidelines.

The Committee noted that BBC Newsgathering had explained that there were two operations in effect for the coverage of this story: a BBC correspondent at the court, and another correspondent who was working away from the court whose report included material gathered by others.

It considered the Editorial Guidelines which required the BBC to safeguard the welfare of children and young people involved in BBC output (Editorial Guidelines 9.1, 9.2.1 and 9.2.2), and it noted that these Editorial Guidelines quote part of and largely mirror Ofcom Broadcasting Rules 1.28 and 1.29. It agreed that the principles outlined in those Editorial Guidelines apply to all children and young people involved in BBC content, whether they are actively participating, or filmed in the street. The Committee also considered the extracts highlighted by the complainant, from the Editorial Policy Guidance Note on Working with Children and Young People.

The Committee first considered whether there had been a breach of the Editorial Guidelines in gathering the information outside the youth court.

The Committee noted that the complainant had stated that directing questions towards a child in a public place was inappropriate, and the actions of the reporters identified the child as the subject of criminal proceedings to anyone in the vicinity. It also noted that the complainant had said that the incident clearly would have caused distress to the child.

The Committee noted that the BBC had highlighted that there was great public concern about the riots, and there was interest in what the parents of the children involved should have done to ensure that their children did not get into trouble.

The Committee agreed that it was appropriate for the BBC News team to film and gather information outside the youth court. The BBC team was in a public place, and it was responding to the public interest in the summer riots, and in particular, the parents of those involved in the riots. The Committee agreed that it is the role of BBC cameramen and reporters to be responsive to stories, provided that they act within the Editorial Guidelines.

The Committee noted that the Head of the BBC Newsroom had confirmed that the BBC's questioning was primarily directed at the mother of the child, with one question directed to the adult accompanying the child. The Committee agreed that it was appropriate for the BBC to direct questions to the adults given the public interest in the parents of those involved in the riots.

The Committee noted that BBC Newsgathering had highlighted that it did not direct any questions to the boy, and it simply filmed the pursuit and questioning of the boy by another media channel. The Committee considered that the filming of the pursuit and questioning of the child by another media channel did not constitute a failure by the BBC to protect the physical and emotional welfare and dignity of the child, nor did the BBC cause the child unnecessary anxiety or distress in this respect. Neither did the Committee consider that the filming of the pursuit and questioning of the child by other media outlets constituted bullying or harassment by the BBC. It therefore agreed that, in filming the pursuit, there had not been a breach of the Editorial Guidelines to safeguard the welfare of children and young people. However, the Committee noted that as the child ran away from the media scrum, the BBC cameraman took a few steps to follow the child. The

Committee agreed that if the BBC had pursued the boy any further, or posed questions to the boy, this could have led to a breach of the Editorial Guidelines in gathering the information for the report.

The Committee then went on to consider whether the broadcast of the questioning and pursuit of the child was a breach of the Editorial Guidelines. It noted that the complainant considered that this was an error of judgment. The Committee also noted the BBC's comments that there was careful consideration of whether to broadcast the material, but the conclusion was that there was a public interest in reporting the case and hearing first hand from the relatives of the youths allegedly participating in the riots.

The Committee agreed that, although there had not been a breach of the Editorial Guidelines in gathering the information for the report, there had been a breach of the Editorial Guidelines in broadcasting the pursuit and questioning. The Committee stressed that the BBC is editorially responsible for what it broadcasts, and it should not broadcast output which the BBC could not have gathered without breaching the Editorial Guidelines. In broadcasting the report the BBC had failed to ensure the dignity of the child was protected, and it had failed to ensure that the child was not caused unnecessary anxiety or distress. Accordingly, the broadcast of the questioning and pursuit of the child was a breach of the Editorial Guidelines on the safeguarding of the welfare of children and young people.

Privacy and whether it was necessary to obtain the consent of the child or parent

The Committee noted that the complainant had stated that the public interest was not served by the broadcast which revealed no information useful for the greater understanding of the issue, and that it did not outweigh the child's expectation or right to privacy.

The Committee noted that sections 6 and 7 of the Editorial Guidelines set out provisions regarding Fairness and Privacy. It noted that the complainant had asked that the Committee consider the issue of privacy. However, the Committee noted that neither the mother nor child had complained about the report. It noted that paragraph 3.10 of the editorial complaints and appeals procedures indicates that sections 6 and 7 are only engaged by a first party complaint, and it noted that in practice the Committee does not consider third party complaints about fairness and privacy. The Committee therefore determined that, given neither the mother nor child had made a complaint, it would not consider sections 6 and 7 of the Editorial Guidelines.

The Committee noted that one of the complainant's points of appeal was that no parental consent had been obtained for the child to appear in the report. The Committee considered the Editorial Guidelines on consent (Editorial Guidelines 9.4.12 and 9.4.14). It also noted an Ofcom case where it was highlighted that particular attention should be paid to the privacy of people under sixteen. The Committee noted that in that case, although there was public interest in a story in which a child was featured, it was not appropriate to broadcast the footage of that child without having secured appropriate consent. The Committee noted that the complainant had stated that, if the child in that case had a legitimate expectation of privacy, the child in the BBC News report should also.

The Committee noted that the Head of Editorial Compliance & Accountability for BBC News had explained that BBC News' general approach to obtaining consent is that it shall film people in public places without obtaining consent unless the activity or behaviour might suggest information of an inherently private nature (for example, someone is receiving medical treatment). The Head of Editorial Compliance & Accountability for BBC News stated that an individual walking outside of a court does not have a legitimate

expectation of privacy and therefore BBC News was not required to consider issues of consent, and in this particular case, there was a public interest in the filming.

The Head of Editorial Compliance & Accountability for BBC News had also stated that Guideline 9.4.12 was not engaged, because the child in this case did not “feature” in BBC output. She stated that “featuring” (as opposed to merely “appearing in”) would imply that the child was doing something where there was a legitimate expectation of privacy (which, BBC News argued he was not) or doing something specifically for the benefit of the BBC which requires informed consent.

The Committee also noted that, the Head of Editorial Compliance & Accountability for BBC News had stated that in any event, section 9, which is concerned with protecting children in BBC output, was overwritten by the BBC’s legal obligation not to identify the child.

The Committee determined that there had not been a breach of the Editorial Guidelines on obtaining consent. It agreed that the automatic reporting restrictions override any consideration about whether to obtain consent, as it is clear that there is an automatic ban on information which leads to the identification of a child concerned in youth court proceedings. The Committee considered that the BBC’s error had been to broadcast a report in which the child was identifiable; there had not been a breach of any requirement to obtain consent.

Finding: Upheld in part.

Stage 2 complaint handling

1. The complaint

Stage 1

The complainant contacted the BBC on 28 October 2011 regarding the BBC Two programme *The Future State of Welfare* which had been broadcast on 27 October. He said that the programme contained a large number of factual errors:

“Every inaccuracy in the programme is serious. The sheer number of them demonstrate that there was no intention to be balanced or rigorous with this investigation of social security. Talking points which are common among government ministers and newspapers hostile to benefit claimants were presented as concrete facts and clearly were intended to advance the shared agenda of all of them towards Britain’s existing welfare system.”

The complainant asked to be provided with a transcript of the programme so that he could document all of the alleged inaccuracies.

BBC Audience Services replied on 5 November saying that the BBC believed the programme was a balanced look at the benefits debate in the UK and explaining that it was not possible to provide the complainant with a transcript of the programme.

The complainant replied on the same day to say that the initial BBC response had incorrectly described his complaint as being that the programme was “biased against the welfare state”. The complainant said that his complaint was about the quality of research and fact-checking that had gone into the programme, which he viewed as having “no factual rigour”. He said “The volume of factual errors in the programme can only be because there was no interest in accuracy.” The complainant said that he had made his own transcript of the programme and set out eleven examples of alleged errors.

The complainant followed up with a third contact on 18 November 2011. He said that, while he was waiting for a response to his contact of 5 November, he was preparing a line-by-line rebuttal of the way the programme had presented information.

BBC Audience Services replied on 23 November 2011 acknowledging the complaint and again on 10 December with a response to the complainant’s criticisms of the programme. The letter concluded by advising the complainant that he could pursue his complaint further by writing to the Editorial Complaints Unit.

The complainant replied on 22 December saying that his complaint was not about bias but a lack of factual rigour. He re-iterated his main point, which was that “every factual error in the programme is serious and that they were numerous enough to support an allegation that there was no attempt at factual rigour at all.” He outlined the delays he had experienced in receiving a response and said that he was unhappy with the replies he had received.

BBC Audience Services responded on 29 December advising the complainant that the Stage 1 correspondence was closed and that it was open to the complainant to pursue his complaint by writing to the Editorial Complaints Unit.

Stage 2

The complainant wrote to the ECU on 22 December 2011 outlining the progress of his complaint so far. The complainant said that the ECU should either provide substantial reasons to support a conclusion that the programme was not factually inaccurate and did not mislead, or it should find there is cause to investigate how rigorously the programme was researched.

An ECU Complaints Director replied on 16 January 2012, apologising for the delay. The Complaints Director set out the 11 points which the complainant had raised at Stage 1 of the process and said that these would be considered against the Editorial Guidelines on accuracy which say that:

“Our output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.”

The complainant responded by email on the same day, saying:

“... I believe an investigation into the programme should not be limited to a set number of errors and scenes, but also look into the extent that the programme was researched in the first place.”

The ECU’s Complaints Director responded on 18 January. He explained that the brief of the ECU is to investigate complaints that there have been specific breaches of editorial standards in material broadcast or published by the BBC. He said that any complaint that a programme was flawed would have to be based on the identification of such breaches of standards and a general complaint about the editorial quality of a programme could not be considered separate from, or in addition to, those.

The Complaints Director said that, while he appreciated that the complainant felt the complaints which he had previously set out were only examples of a wider pattern of inaccuracy in the programme, he would not be able to consider any further particular points of complaint. The Complaints Director said that the complainant would now be outside the time limit of working days from broadcast for submitting further complaints.

The complainant replied, saying that whilst the Complaints Director’s description of his 11 examples was accurate, he had not included the complainant’s concerns about the entire programme itself. He had made it very clear from the moment that he gave the examples in the first phase that they were only a few examples out of a great many errors in the programme and that his primary complaint was that the programme “lacked factual rigour”. He maintained his belief that the number of inaccuracies meant that the investigation should also look into the extent to which the programme was researched. He also said that if this was not acceptable, he wished to amend his complaint to include a further “50 or 60” points of concern.

In further correspondence, the complainant said that he had made it clear from the very beginning that his complaint about the programme included almost every minute and segment of it. He said:

“Your reply now moves the goalposts and expects that I should have provided a full list of the problems within the time limits I had been set, something which I alone could not have researched to confirm in time. It can be said that the entire programme does not meet the standards for accuracy set out in the Editorial Guidelines. If that is insufficient, then please explain why I have been led on with little clarification in the full knowledge by BBC staff that time would expire and never realistically permit the full issue to be addressed.”

The Complaints Director replied on 20 January. He said that, while he appreciated the point the complainant was making, it was not the ECU's role to take on a general, non-specific complaint of inaccuracy and then look into every factual claim or statement made in a programme to test it for accuracy. The Complaints Director said that he would be very happy to look into the specific claims which the complainant had already made but that he would not be able to look into fresh complaints of inaccuracy and nor could he consider a general complaint of inaccuracy separately from the specific complaints.

He concluded by advising the complainant that if he was unhappy with this it was open to him to appeal the matter to the Editorial Standards Committee of the BBC Trust.

Appeal to the Trust

The complainant appealed to the BBC Trust on 8 February 2012. The complainant said he was appealing against the decision of the ECU to investigate only specific examples of breaches of the editorial guidelines and its suggestion that the time limit for him to submit further complaints about specific instances had passed. The complainant confirmed that he believed the number of serious factual errors or misleading statements exceeded more than 60 and that 20 days² was insufficient time to account for them all. He said that was why his original complaint had been that the entire programme lacked factual rigour.

The complainant added that other than the first reply he had received, he had received no response until December 12, 46 days after the programme had been broadcast, and long past the time limit he had been given. The complainant added that he had not been told, nor did it say anywhere on the complaints website, that complaints could only be about specific points and not a programme itself. The complainant said he did not yet want the ESC to make a decision on the errors he had alleged but was appealing against the ECU retrospectively applying a specific rule which he said he had no previous chance of being informed about.

2. Applicable procedures

The BBC's Complaints Framework and associated Editorial Complaints and Appeals Procedure sets out the timescales within which complainants should write to the BBC. The relevant sections are:

2.1 There are three stages to the process. Within 30 working days (or exceptionally the BBC may allow longer if the BBC decides there is a good reason for the delay) from the transmission or publication you can:

(a) make a complaint via the complaints website: www.bbc.co.uk/complaints

(b) or ring BBC Information on 03700 100 222

(c) or write to BBC Complaints, P0 Box 1922, Glasgow G2 3WT.

...

Stage 2: If I'm not satisfied with the reply, what can I do next?

2.8 BBC Information or the department responsible for the content about which you are complaining will try to resolve your complaint within two exchanges of

² It should be noted this was an error on the part of the ECU – the complaints procedure sets out you should complain within 30 days of the broadcast

correspondence. If you are still unhappy after these two exchanges you can take your complaint further.

- 2.9 If your complaint was about a specific item broadcast or published by the BBC and you believe it has breached the BBC's editorial standards, please write within 20 working days of the date of the final stage 1 response to the Editorial Complaints Unit (ECU), Room 5168, BBC White City, 201 Wood Lane, London W12 7TS (or exceptionally the BBC may allow longer if the BBC decides there is a good reason for the delay).

The BBC's Royal Charter and Agreement states under Article 52(3):

"Complaints to the BBC have an important role to play. The BBC's complaints handling framework (including appeals to the Trust) is intended to provide appropriate, proportionate and cost effective methods of securing that the BBC complies with its obligations and that remedies are provided which are proportionate and related to any alleged non-compliance."

3. The Committee's decision

The Committee considered the complaint against the relevant procedures and the requirements of the Royal Charter and Agreement with regard to handling complaints.

In reaching its decision the Committee took full account of all of the available evidence, including (but not limited to) the report prepared by the Trust Unit, and subsequent submissions from the complainant and the Editorial Complaints Unit.

The Committee noted that the complainant originally contacted the BBC on 28 October 2011, one day after the broadcast. He received a response from the BBC on 5 November and he replied the same day. He did not receive his second substantive Stage 1 response until 10 December, 31 working days after the broadcast.

The Committee was mindful that there is currently no target in place for second Stage 1 responses, but that this is part of the proposals in the review of the Complaints Framework. It is proposed that the target for a second Stage 1 response will be set at 20 working days (or 35 for complex cases).

The Committee noted the complainant's request that the ECU consider the general accuracy of the programme, outside any specific examples raised. The Committee noted the ECU's argument that it is not possible to provide a threshold beyond which a certain number of inaccuracies could lead to a finding of general inaccuracy. The Committee agreed that it was appropriate for the BBC to consider specific allegations of inaccuracy and that it was for the ECU to come to any relevant conclusions with regard to the causes and remedies should any specific examples be upheld.

The Committee did not agree that the ECU should consider an allegation of general inaccuracy separate from the examples provided by the complainant.

The Committee noted that, in response to the ECU's statement that it would be too late for him to submit further specific examples of alleged inaccuracy, the complainant said:

"I was never told I would have to specifically list every individual point of contention before the time limit was up until you did, nearly two months after that time limit had passed. The guidelines for those wishing to make a complaint only say complaints must be made within twenty (sic) working days, they do not detail what you have said about individual specific points."

The Committee noted the ECU's view that, while it is not explicitly stated in the complaints procedure that all points of complaint must be made within 30 working days of broadcast, this is implicit in the statement that the BBC will normally reply within 10 working days, and that complaints cannot be escalated to Stage 2 without completing Stage 1. The Committee also noted the ECU's contention that, while the complainant had made clear throughout that he believed the programme contained many more errors than he had enumerated, it was not clear that he wished to have additional points considered until his response to the ECU's first letter.

The Committee accepted the ECU's point that it was undesirable to have an open-ended opportunity for raising complaints at Stage 1. However, it was sympathetic to the complainant's view that he had set out the nature of his concerns at the outset and that the responses at Stage 1 had not directly addressed his general complaint about the adequacy of programme research or the specific factual inaccuracies which he had alleged. The Committee took into account the specific circumstances of this complaint and accepted that the complainant was unaware at the time of making his Stage 1 complaint that any further examples of alleged inaccuracy would not be considered and that his general complaint would not be considered. The Committee agreed that it would be appropriate for the complainant to be given the opportunity to put forward his additional points of complaint for consideration. The Committee agreed that the 30 day limit for making complaints at Stage 1 was reasonable, and that this should be applied from the date of the complainant being informed of the Committee's decision. The Committee agreed that the BBC should decide how best to handle any additional points from the complainant made within this time limit, whether they are passed back to Stage 1 as new complaints or handled directly by the ECU.

Finding: Upheld.

Application of expedited complaints procedure at Stage 3

The Committee considered a complainant's challenge to the decision of the Head of Editorial Standards to apply the expedited handling procedure to appeals from the complainant which contain "allegations against the BBC's output regarding race or nationality and complaints which threaten action against BBC staff and complaint handlers".

The Committee noted that the Head of Editorial Standards had based her decision to apply the expedited procedure on the grounds that the complainant had made complaints which:

- are repetitions of substantively identical complaints that have already been resolved
- have no reasonable prospect of success
- are persistently and repeatedly appealed unsuccessfully to the BBC Trust.

The Committee noted that the complainant had challenged the Head of Editorial Standards' decision on the following basis:

- that the Head of Editorial Standards had not made clear which complaints were identical;
- that the complaints he had submitted had "more than a reasonable chance of success"; and
- that his previous complaints were not successful because the BBC do not examine complaints impartially. The BBC complaints process is not fair.

The Committee noted that in response to a request from the complainant to be informed which of his complaints fell into the above category, the Complaints Adviser provided details of five previous appeals – one of which had been partially upheld, the other four had been unsuccessful.

The Committee noted that all of these complaints centred on issues of race, racism and nationality and had been submitted over a period of six years.

The Committee considered that, given the period of time over which the complaints had been made, and the fact that one of the appeals had been partially upheld, it would not be appropriate to apply the expedited procedure at this time. The Committee accepted that the complainant was approaching the threshold at which point it may be appropriate to apply the expedited procedure; however, on the basis of those five appeals, it did not agree with the Head of Editorial Standards that this point had been reached.

Turning to the issue of repeated threats against BBC staff and complaint handlers, the Committee considered that, while it is inappropriate for the complainant to make threats in this way, this is a matter which would be more appropriately dealt with by writing to the complainant to request that he refrains from making such threats in future complaints. The Committee did not agree with the Head of Editorial Standards' decision to apply the expedited procedure on this basis.

The Committee concluded that the expedited procedure should not be applied at this time, but that the complainant should be advised that any further unsuccessful complaints which fall within the expedited procedure criteria, as outlined by the Head of Editorial Standards, would strengthen the case for it being applied in the future.

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.

BBC Election Guidelines

The Committee was asked to consider whether to accept the complainant's challenge to the Head of Editorial Standards' decision that his appeal did not have a reasonable prospect of success and should not proceed to the Committee, given that it was out of time.

The complaint

The original complaint was about how the BBC's May 2011 Election Guidelines decided the amount of coverage a political party should receive. The complainant said that the Guidelines gave electoral advantage to larger parties and were not impartial.

In his appeal to the Trust the complainant said that the BBC's coverage of political parties during the May 2011 elections did not follow the criteria set out in its Election Guidelines, resulting in it not being impartial. He said that the Chief Adviser, Politics had seemed to introduce new impartiality guidelines that were not in the Election Guidelines.

Appeal to the BBC Trust

The appeal was made to the ESC on 10 December 2011. The Senior Editorial Strategy Adviser wrote to the complainant on 6 February 2012, informing him that the Head of Editorial Standards had concluded that his appeal did not have a reasonable prospect of success, and explaining that any challenge to that decision must be made by 20 February 2012. She also explained that, if, exceptionally, he needed more time, he would need to give his reasons as soon as possible. The complainant appealed seven working days after that deadline (on 29 February 2012), and he had therefore failed to comply with the appeal procedure.

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 agreed that it had the discretion to consider appeals, even though a complainant had failed to comply with the appeal procedure. However, it noted that the procedure was there for good reason and it was intended to be observed by all. The Trust would therefore exercise its discretion only if there were exceptional circumstances.

In considering whether there were exceptional circumstances in this case, the Committee had particular regard to the complainant's letter of 29 February 2012 and in particular the following matters.

First, the Committee noted that the complainant had provided no reason for the delay in response, even though the Trust had clearly indicated that reasons must be given if further time was required.

Second, the Committee noted that any delay should be considered in light of the

seriousness of the issues raised by the complainant. However, the Committee was satisfied that the complaint did not raise a matter of substance that would justify waiving the normal complaints and appeals procedure.

The Committee therefore agreed not to consider the complainant's challenge to the decision of the Head of Editorial Standards as it was out of time and inadmissible.

The Committee agreed that the appeal should be closed.

Sorry I've Got No Head and School of Silence, BBC One, 24 August 2011

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

The complaint

Stage 1

The complainant wrote to the BBC regarding three sketches which he had watched the previous day on BBC One at about 3.10pm.

The first sketch portrayed a man joining the front of a queue at a bus stop and producing ice cream and sauce from his nose; the second sketch featured a man putting food onto children's heads; and the third sketch involved a man using a "trump machine" to simulate the sound of flatulence in order to make children laugh.

The complainant felt that these three sketches depicted unhealthy and depraved behaviour, unsuitable both for the children involved in the broadcast and for those watching at home.

In reply, BBC Audience Services said that the BBC believed it offered a wide range of imaginative children's programmes but accepted that not every programme would appeal to every child. The response explained that over the years there had been a substantial change in the style and presentation of children's programming. Such changes tended to be a reflection of changes in society and it was important that the BBC remained in touch with its audience.

In response, the complainant said that he was very disappointed that the BBC's reply had not referred to the specific incidents he had raised.

After a delay of several months the complainant received a response from the Executive Producer of *Sorry I've Got No Head*. He said that he wanted to put the issues the complainant had raised into context. He explained that over three series he had endeavoured to create a comedy universe which suited and reflected the world of the audience and that the three sketches were intended to be viewed as heightened and ridiculous examples of human behaviour with comic consequences.

He was confident that viewers would perceive these sketches as comedy rather than negative social comment.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) at Stage 2 of the complaints process restating his comments about the programme and expressing concern about the handling of his original complaint. His second letter to BBC Audience Services and subsequent letter to the Head of Department had gone unanswered. He had also been unaware of the ECU prior to his complaint and felt their address should be published in the Radio Times.

In reply the ECU explained that they intended to consider the complaint in the light of the BBC's guidelines on Harm and Offence. They were unable to consider the second point relating to the handling of the complaint, as their remit was restricted to considering issues with content published by the BBC. However, this point had been passed to senior colleagues in BBC Audience Services for their consideration and response. The reply also explained that the ECU only dealt with complaints when they had been considered at Stage 1 of the complaints process. This explained why the Unit's contact details were not published in the Radio Times.

The complainant replied that he felt his concerns were of wider scope than the guidelines quoted, and included dishonesty, cheating, disgusting unnatural behaviour, obscenity and moral failure. He was also still unclear about the BBC's complaints process and requested a leaflet.

The ECU replied that they had watched the episode concerned and previous programmes in the series. The programme in question showed a man joining the front of a line of people at a bus stop, having asked if it was the back of the queue. A comet fell from the sky into his neighbour's hand. The man then produced ice cream and chocolate sauce from his nose.

The ECU noted that this was the eighth episode of the third series of *Sorry I've Got No Head*. In their view, regular viewers would have been very familiar with the anarchic tone of the programme and the ridiculous nature of the characters within it – for instance, a man with remote-controlled legs. Regular viewers would also have been aware that this was a returning sketch within the programme, and that the same man had at other times produced from his nose such unlikely items as tennis balls, a balloon animal and an elephant. The ECU accepted that, if taken literally, a new viewer might have understood the ice cream to be made of bodily fluids. However, despite its origin, the ice cream was clearly made up of single scoops of strawberry, chocolate and vanilla.

The ECU also explained that the guidelines on Harm and Offence did not require that the BBC never offended. They did require that the programme makers judge the suitability of content against the context of when it was broadcast and the likely expectations of the audience. The ECU believed that the sketch was entirely absurd in premise and expectation and very much in the tradition of surreal slapstick humour that audiences might expect from a comedy programme aimed at younger people. Therefore the ECU did not uphold the complaint.

The ECU believed that the BBC's guidelines on Harm and Offence were those which most closely matched the complainant's concerns. These guidelines made no reference to moral standards but did refer to "generally accepted standards" which would cover the complainant's concern that what was shown was obscene and disgusting. The guidelines did not require programme makers to avoid showing dishonesty; however, what was shown was absurdist humour so the risk of imitation, in the ECU's view, was minimal.

The ECU had been unable to locate the subsequent sketch which the complainant had described as involving a man farting into a child's face. In any event no children were included in the episode which the ECU had investigated.

Finally, the ECU enclosed a printout from the BBC's Complaints website, which explained the complaints procedures.

The complainant replied thanking the ECU for their interesting and detailed letter and for information provided about the BBC's complaints process. He said that he was in partial

agreement with the ECU's comments about regular viewers. He also accepted that tennis balls, a balloon animal and an elephant were indeed unlikely objects. However, he felt that producing fluid from one's nose onto someone else's ice cream was offensive. He believed that the man who jumped the queue represented dishonesty and cheating. This was gratuitous unsocial behaviour and he requested the ECU's views on it. He also asked the ECU to make further endeavours to locate the sketch in which a man broke wind into a child's face. Regarding the ECU's comment that no children were featured in this episode, he felt there must be an error. In his original complaint he had noted a sketch in which a man heaped food onto a child's head. This point of his complaint had yet to be addressed.

The ECU replied that they remained of the view that nothing in the programme was in breach of the standards expressed in the BBC's Editorial Guidelines. The behaviour on display was so plainly bizarre and so utterly divorced from reality as to be entirely disconnected from usual bodily functions. Regarding the queue-jumping incident, the ECU referred to their letter in which they stated that the BBC's guidelines did not prohibit the showing of dishonest behaviour. The sketch featured absurd behaviour on the part of a manifestly fictional and decidedly odd character. The ECU restated their view that the risk of imitation was minimal. The ECU had tried without success to locate the sketch in which a man broke wind in a child's face. As children had never featured in *Sorry I've Got No Head*, it was possible that the complainant might have viewed a different show.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust citing three sketches which displayed, in his view, four instances of unhealthy and depraved behaviour. He restated his views that the queue-jumping scene showed dishonest, cheating and gratuitous unsocial behaviour. He said the ice cream incident demonstrated unnatural and disgusting behaviour and that heaping food on a child's head showed an obscene waste. He said the sketch in which a man broke wind in a child's face showed a moral failure by those concerned. He complained that the ECU had failed to locate this sketch and had failed to comment on the previous sketch. The complainant said that he would be grateful if the BBC Trust could locate and comment on these sketches.

The Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards. She explained that the Trust did not adjudicate on every appeal that was brought to it, and part of her role was to check that appeals qualified for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She said the Head of Editorial Standards had read the relevant correspondence and transcripts of the items in question and 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 the Head of Editorial Standards understood the complaint to be that the material under consideration was of an unhealthy and depraved nature, thus unsuitable both for the children involved and for those watching at home. She therefore judged that the BBC's guidelines on Harm and Offence had been engaged.

Sorry I've Got No Head

The Head of Editorial Standards believed that two of the complainant's points related to the same sketch in which a man knowingly went to the front of a queue at a bus stop and dispensed a stream of ice cream and then chocolate from his nose. She said that *Sorry I've Got No Head* had been variously billed as "anarchic", "surreal" and "Little Britain for children". She said that it was clearly labelled as a comedy sketch show for children and

some of the actors featured were amongst Britain's best-known comedians. There were regular appearances from characters who found themselves in extraordinary situations: Tony who lived down the back of a sofa, headless Bill who took up tennis, and the helpful bees who found themselves in space. As the ECU had observed, the man who produced objects from his nose was one of these regular characters and previous objects produced included animals and tennis balls.

Given the fantastical context of the programme, and the unlikely possibility that children might use these surreal characters as literal role models, the Head of Editorial Standards did not believe that the appeal had a reasonable prospect of success in proving that this material might seriously impair the physical, mental or moral development of children and young people.

School of Silence

The Head of Editorial Standards noted that the complainant had also referred to two subsequent sketches which the ECU had been unable to locate. Upon further research, the Trust had discovered that these sketches were in a different programme which had followed *Sorry I've Got No Head*. This programme was *School of Silence*, broadcast at 4pm on BBC One on 24 August 2011.

The Head of Editorial Standards noted that this programme had been billed as a fun children's gameshow, where four of Britain's noisiest children were sent to the School of Silence to prove that they could be quiet. They were put through intensive silent training in which they faced a range of challenges that were designed to make them laugh, scream and shout, but what they must do was keep absolutely silent. The challenges featured in this programme included a staring competition, being silent whilst applying clown paint to each other's faces and numerous tasks involving gelatinous fluids, or "gloop".

In the school canteen, two dinner ladies set a challenge: one child was to be turned into a human pizza by her sister. Both had to remain silent whilst one poured tomato sauce on the other's head, followed by herbs, sweetcorn, olives and a grated cheese topping.

Having attended three "classes", the children underwent a "final exam", during which they were placed in stocks and berated by Colonel Kittens, a mock army officer. His attempts to make them giggle included tickling their feet with a feather duster, pouring jelly on their heads, squirting spray string into their faces, wearing a false nose and glasses and deploying the "trump machine", which made a noise akin to breaking wind.

The Head of Editorial Standards noted that throughout the programme the challenges were set up to test the children in their ability not to scream or giggle. However, they were not tasks that might terrify them (such as being presented with spiders or snakes). Instead they were challenges that might be considered by children as "pleasantly unpleasant", hence the preponderance of gloop. The Head of Editorial Standards noted that many of the challenges were presented as surreal or comic inventions: the human carwash for instance in which a child was covered in lather and then sprayed with water.

The Head of Editorial Standards said that, had the "exam" truly featured a teacher breaking wind in a child's face, this would have been a genuinely gruesome and repellent sketch. Instead it featured a comedy character dressed in part army uniform, part shorts and garters, pressing a button on a device shaped like a car alarm fob to achieve the desired effect. He did this twice, once facing a child whilst raising one leg and the second time facing away from the child at a short distance. The sound effect was clearly made manually and was part of a volley of slapstick techniques.

Given the enjoyment found by many children in slapstick humour, including the perennial appeal of “gunk” and jokes about breaking wind, the Head of Editorial Standards did not consider the complaint had a reasonable prospect of success in establishing that there had been a serious breach of “generally accepted standards”, nor that the material might seriously impair the physical, mental or moral development of children and young people. Indeed the effect of the “training” was that these four noisy children attempted to become quieter and quieter as the day progressed, “graduated” with flying colours and were sent away with an exhortation to “spread the silence”.

Whilst noting that the complainant felt strongly on this subject, the Head of Editorial Standards did not consider that the complaint overall had a reasonable prospect of success and did not therefore propose to put it to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated his objections to the four scenes identified in his complaint. In particular, the complainant said that the depiction of queue jumping was not comedic or surreal. He also emphasised his concern that the sauce was depicted coming from a person’s nose onto another person’s ice cream and said that this was “vivid, unpleasant and offensive”. He said that the sketch involving food was wasteful and “a sad comment on our society” whether or not the food was real or synthetic as it left a negative attitude to food. With regard to the “trump machine” scene, the complainant said that the fact this was acting and the man was not really breaking wind did not make it acceptable.

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 Stage 2 finding from the Editorial Complaints Unit and the programmes in question.

The Committee noted the complainant’s very strong feelings about the material he had seen but was mindful of the expectations of the intended audience for the programmes. The Committee agreed with the Head of Editorial Standards that there was no evidence that the actions portrayed in either programme might seriously impair the physical, mental or moral development of children and young people. The Committee also agreed that the scenes complained of did not breach “generally accepted standards”.

The Committee therefore agreed that there was no reasonable prospect of success for an appeal on the grounds that the programmes had breached the guidelines on Harm and Offence.

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

Top Gear, BBC Two, 3 August 2011 and News at Six, BBC One, 16 August 2011

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

The complaint

Stage 1

The complainant wrote to the BBC to say that *Top Gear* had been too negative in its coverage of electric cars and that an edition of *News at Six* earlier in the week had glorified oil. He said these two examples showed the BBC as being behind oil and against people wanting to help the planet.

BBC Audience Services replied with a piece which had been written by the Executive Producer of *Top Gear* in response to the issues. He said that the point of the episode in question was to look at the pros and cons of living with an electric car as an alternative to a petrol car. He said the programme was not testing the range claims of the vehicles and knew that the cars would have to be recharged at some point. The Executive Producer said that the consumer points coming out of the programme were that electric cars are very expensive; that the recharging infrastructure is scratchy; that the range readout of the cars varied enormously; and that the battery of an electric car remained its Achilles heel. He said that he did not believe that the programme was misleading viewers on any of these points.

BBC Audience Services said with regard to the complaint about the *News at Six* that the Corporation and its journalists are committed to impartiality. The BBC may not express a corporate opinion on matters of public policy (other than broadcasting) and seeks to ensure that, over a period, all sides of any public debate are explored and explained, so that viewers and listeners can be better informed in coming to their own judgment.

The complainant responded, saying that *Top Gear* was testing the range claims of the vehicle by stating that the destination of the car was Lincolnshire and then failing to reach it. He maintained that the BBC was failing to serve the public interest by being negative about electric cars and being overly positive about oil.

The complainant wrote to the BBC Trust saying that his complaint was not one that would be answered on a day-to-day editorial basis, but one to be resolved through the BBC Editorial Guidelines. The guidelines needed to be altered to state that if a policy/product was good for the world, then it must be represented as such, as that was in the public interest.

The BBC Trust replied saying that the BBC Editorial Guidelines provided a framework for the Corporation's impartiality and that to include a guideline as the complainant suggested would not be impartial. The Trust also included a link to its review on impartiality in BBC's science reporting.

BBC Audience Services replied saying that it had forwarded the complainant's concerns to the *Top Gear* Executive Producer, who said that he stood firmly behind what he had already said about the programme. The programme showed, by the journey it took to Lincolnshire, that the recharging infrastructure for electric cars is not well developed in this country and that was why the vehicles ran out of charge. He said that this situation

might change, but electric cars were being sold now and so it was important to point out these problems.

BBC Audience Services said that it did not agree that the report on the oil leak in the North Sea on *News at Six* was biased. The report explained the detrimental effects of this leak through comments from an oil economist and a marine biologist. In addition, both the BBC News Channel and radio news had explained in later bulletins how the leak could damage the environment.

Stage 2

The complainant wrote to the Editorial Complaints Unit at Stage 2 of the complaints process. He said that he believed *Top Gear* had breached BBC Editorial Guidelines by portraying electric cars negatively when they offered a potential solution to reducing carbon emissions, and that the programme had been unfair by concentrating on the range of electric cars and so showing their weaknesses. He said the programme had failed to show the car's battery had a quick charge time of 30 minutes. The complainant also said that the item on the *News at Six* had glorified oil, and he had seen no concern for wildlife. He said that neither of these programmes was serving the public interest because the BBC was failing to educate the public about what was good or bad for its future survival.

An ECU Complaints Director considered the complaint in relation to the Editorial Guidelines on Impartiality, including a section on Breadth and Diversity of Opinion. The complainant said that the BBC's primary purpose was to serve the public interest and that his complaint should be looked at against this.

The Complaints Director responded saying that the remit of the ECU was to consider whether an item broadcast by the BBC met the standards set out in the BBC's Editorial Guidelines. These gave a framework that programme-makers were expected to adhere to in order to ensure that the BBC met its obligation of serving the public interest. He had addressed the complaint by considering the Editorial Guidelines on Impartiality, but had borne in mind the BBC's Editorial Values particularly those dealing with Serving the Public Interest.

With regard to the complaint that *Top Gear* had presented a negative impression of electric cars, the Complaints Director said that there was no obligation within the BBC's Charter or the Editorial Guidelines for the BBC to present any particular means of transport in a positive light. The BBC had to ensure that it did all it could to treat controversial subjects with due impartiality and the issue of anthropogenic global warming was one of these subjects. As a result, it would be inappropriate for the BBC to promote any particular policy, such as the use of electric cars.

The Complaints Director considered whether *Top Gear* had presented a fair and duly impartial review of the electric cars it was testing. He said that he thought regular viewers of the programme would have expected the presenters to offer their opinions on the cars they tested and would be aware that these views were likely to be expressed in a light-hearted yet robust manner. He said the programme set out the aim of the road test from the start when the presenter James May asked what were the pitfalls and the advantages of electric cars. A discussion then followed on the design, performance, cost and recharging issues related to electric cars.

The Complaints Director noted that the presenters then went on a trip to Lincolnshire in which they highlighted the relative scarcity of public charging stations for electric cars. He said that the presenters had played up the consequences of running out of power and the

time it would take to fully charge an electric car, but that such hyperbole was par for the course for this programme.

The Complaints Director said that he could understand why the complainant would have preferred the programme to take a different approach, but he could not see why the way the programme presented this item amounted to a lack of due impartiality. He said that *Top Gear* did not specify the distance of the journey, but did highlight that electric cars had a limited range and the difficulties of recharging. He felt that these were legitimate points to make and, as a result, he did not uphold the complaint.

The Complaints Director wrote separately with the outcome of his investigation into the complaint about the *News at Six*. He explained again that the remit of the ECU was to consider whether an item met the standards set out in the Editorial Guidelines and how these guidelines helped to ensure that the BBC met its obligation of serving the public interest. It was open to question whether the role of the BBC was to educate the public in what was good or bad for its future survival in the context of what should be done to tackle the causes of climate change. He pointed out that this subject was considered a controversial one by the BBC.

The Complaints Director said that, having watched the report, it appeared an accurate summary of the cause and extent of the oil leak in the North Sea and reflected a range of relevant opinion, including a marine biologist who gave a sense of the scale of the environmental damage. He said that, as a result, he could not conclude that the report was unduly weighted towards the oil industry.

The Complaints Director said that he did not believe there was any requirement for the report to explain that the burning of fossil fuels contributed towards climate change. This item was about a specific leak, not a wider assessment of the causes or consequences of climate change.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust saying that he was disappointed with the findings of the ECU's investigation into *Top Gear*. He said that climate change was not a controversial subject unless one wanted to deny it. The BBC had a duty to point out that, unlike petrol cars, electric cars would not significantly contribute to our potential extinction.

The complainant also wrote to the BBC Trust to say that he still believed the *News at Six* report was weighted towards the oil industry and that the BBC was not serving the public interest by promoting oil over other alternatives.

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

She explained that the Trust did not adjudicate on every appeal that was brought to it, and part of her role was to check that appeals qualified for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and transcripts of the items in question and 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 the Head of Editorial Standards understood this was a matter about which the complainant felt very strongly. With reference to *Top Gear*, the Head of Editorial Standards noted that the Complaints Director of the ECU has

said there was no obligation within the BBC's Charter or Editorial Guidelines for the BBC to present any particular means of transport in a positive light. The Head of Editorial Standards noted too that he had said that, as the issue of what should be done to tackle the causes of climate change was considered a controversial subject by the BBC, it was one which the Agreement accompanying the BBC Charter said should be "treated with due accuracy and due impartiality".

The Head of Editorial Standards said that the BBC's Editorial Guidelines lay out the criteria for determining whether a subject is to be considered controversial. These include: the level of public and political contention and debate; how topical the subjects are; sensitivity in terms of relevant audiences' beliefs and culture; whether the subjects are matters of intense debate or importance in a particular area; a reasonable view on whether the subjects are serious; the distinction between matters grounded in fact and those which are a matter of opinion.

The Head of Editorial Standards noted that *Top Gear* set out at the start of the item that its aim was to test the advantages and disadvantages of electric cars. Having discussed various issues surrounding this type of vehicle, the presenters then went on a road trip in which they highlighted the relative scarcity of public charging stations for electric cars.

The Head of Editorial Standards also noted the comments of the Executive Producer of *Top Gear* that it was important for people to know that the recharging infrastructure for electric cars in this country was not well developed when they came to consider whether to buy such a vehicle. She believed that the programme was making legitimate points about the electric car and so did not believe there was evidence that this item showed a lack of due impartiality.

The Head of Editorial Standards understood that the complainant may have preferred the programme to approach these issues in a different way or with a different tone. However, she noted what had been said about the *Top Gear* audience expecting its presenters to review products in a light-hearted yet robust manner.

The Head of Editorial Standards noted that the journey being undertaken in order to test the car was described as "a perfectly ordinary trip to the seaside" and that the complainant believed the audience would assume this was a journey starting from the studio in London and could therefore deduce the distance involved. The Head of Editorial Standards explained that the studio for this programme was not, in fact, in London; but notwithstanding that, she noted that there were no indications given in the script as to the length of the journey that could have been misleading to the audience.

The Head of Editorial Standards informed the complainant that the Trust's Editorial Standards Committee had in the recent past scrutinised the style and content of *Top Gear* and had concluded that the audience was by now well aware of how the presenters approached each topic. Provided the style did not involve a breach of the relevant guidelines, it assumed the viewer could distinguish opinion from fact and not be misled.

As regards the BBC failing to serve the public interest by not actively promoting electric cars, the Head of Editorial Standards noted that the Complaints Director had explained that the Editorial Guidelines set out the standards to which programme makers were expected to adhere in order to ensure that the BBC met its obligation of serving the public interest. Because she did not believe that this edition of *Top Gear* had breached these Guidelines with respect to Impartiality, the Head of Editorial Standards could not agree that the Corporation had failed to serve the public interest.

Turning to the complaint about the *News at Six*, the Head of Editorial Standards noted that the report in question was about a specific oil leak in the North Sea, rather than a wider assessment of the oil industry and its potential impact on climate change. The complainant was informed that a member of the Trust Unit had read the transcript, and the Head of Editorial Standards noted that the report included a marine biologist who gave a sense of how the leak had harmed wildlife, and an oil economist who explained that the environmental cost of anything going wrong when drilling in the North Sea was very high.

As a result, the Head of Editorial Standards believed that, although it was about a specific oil leak, the report did give sufficient emphasis to the problems of oil production and so did not fail to be duly impartial. As she did not believe that this item had breached the Editorial Guidelines with respect to Impartiality, the Head of Editorial Standards again could not agree that the BBC had failed to serve the public interest.

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

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated his complaint and corrected an error in the description of his complaint given in the letter from the Senior Editorial Strategy Adviser. He also said that the *Top Gear* item did not look at the advantages of electric cars, such as the level of CO₂ produced by petrol cars.

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 programmes in question.

The Committee noted the complainant's view that the BBC should be promoting what he saw as the public interest in the adoption of electric cars and opposition to the oil industry. The Committee was mindful, however, that while the anthropogenic contribution to climate change was not considered by the BBC to be controversial in the context of its guidelines, the specific actions and policies adopted to deal with the issue were deemed to be a controversial matter. The Committee agreed that it was correct to expect such actions to be treated with appropriate impartiality.

The Committee agreed that the approach taken in this episode of *Top Gear* was consistent with the style of the programme, which would have been well known to its audience. The Committee agreed that there was no evidence to suggest that the programme had shown a lack of impartiality or had misled its audience with regard to the points it was making. The Committee therefore agreed with the Head of Editorial Standards that there was no reasonable prospect of success for this aspect of the complaint on appeal.

With regard to the *News at Six* item, the Committee noted that this was a report about a specific incident and not a wider exploration of the issues. The Committee agreed that the report had given sufficient emphasis to the problems of oil production and there was no reasonable prospect of success for an appeal on the grounds that it had not been impartial.

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

The One Show, BBC One, 7 October 2011

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

The complaint

Stage 1

The complainant wrote to the BBC regarding a report on *The One Show* in which it was stated that England was hosting the Olympics in 2012 instead of the United Kingdom. He said that this was inaccurate. The report referred to the Channel Tunnel, Concorde and the Duke of Wellington as being English or made by England, which the complainant said was also inaccurate. There was also a reference to "English time" which the complainant said did not exist. The complainant said that "this whole report was nothing but a lie from beginning to end and was most offensive to all other parts of the United Kingdom".

BBC Audience Services replied, explaining that the complaint had been forwarded to *The One Show's* producer who said that the focus of the item in question was specifically about the rugby match between England and France. The theme was the history of rivalry between England and France. He acknowledged that many of the events referred to did not just involve England but said that using the term "United Kingdom" or "Great Britain and Northern Ireland" would have been confusing. The producer went on to say that *The One Show* was very aware that not all their viewers were English and he apologised if the complainant was offended.

The complainant wrote again pointing out that, although he had been offended, his complaint was about factual error or inaccuracy. He did not accept that it would have been confusing to refer to the events as British rather than English.

BBC Audience Services replied saying that they had discussed the matter with the programme's Executive Editor who pointed out that the tone of the item in question was clearly light-hearted. If anything, it could be seen as a parody of the way nationality was claimed and argued over.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) repeating his allegation that the programme had made several statements which were inaccurate. He said the suggestion that the item was light-hearted did not detract from the fact that the statements were wrong.

An ECU Complaints Director considered the complaint in relation to the guidelines on Accuracy. The Complaints Director said that it was clear from watching the programme that the item was delivered in a light-hearted manner, playing up to the stereotypical relationship between people from England and France, and highlighting the ongoing competition between the two nations. He pointed out that the guidelines required "due accuracy" and applied a less stringent test for entertainment than for factual content. The item was designed to be entertaining rather than informative, in his view. He did not agree, therefore, that the item was materially inaccurate or misleading, or in breach of the guidelines.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he did not accept the ECU's argument. He said that even if the item was light-hearted, the facts were wrong.

The Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards. She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and transcripts of the items in question and 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 the Head of Editorial Standards appreciated that the complainant felt strongly about the need for accuracy in referring to England and the United Kingdom. However, she believed that the ECU was correct to point out that the guidelines required "due accuracy", and that allowance must be made for the fact that the item was essentially a jovial exchange about English/French rivalry rather than a news report or documentary.

The Head of Editorial Standards was sure the vast majority of viewers would not have taken the comments, including the references to "England" and "English", seriously, particularly given the context of the item (which was the England v France rugby match that was due to be played the next day) and would not therefore have been materially misled by them.

For this reason, the Head of Editorial Standards did not believe that the appeal had a reasonable prospect of success.

The Head of Editorial Standards also understood that the complaint was specifically about inaccuracy, but noted that the producer of *The One Show* had apologised for any offence which may have been caused.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He repeated his view that it did not matter that the item was light-hearted, it was factually wrong.

The Committee's decision

The Committee was provided with the letter from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the programme in question.

The Committee noted that the BBC had accepted that the item had been factually wrong but it agreed that the consideration was whether "due accuracy" had been achieved. The Committee agreed that the context of the item was important in considering whether there was a case that the programme had breached the guidelines on accuracy. The Committee agreed with the Head of Editorial Standards' view that, in light of the context, viewers would not have taken the comments seriously and would not therefore have been materially misled by them. The Committee agreed that the appeal did not have a reasonable prospect of success on the grounds that the programme had breached the accuracy guidelines.

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

Application of expedited complaints procedure at Stage 1

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

The complaint

Stage 1

The complainant wrote to the BBC regarding BBC Audience Services' decision to apply the expedited complaints procedure to his complaints concerning the Jeremy Vine radio show, its website and Mr Vine's Twitter feed.

The complainant wrote on numerous occasions between January 2011 and January 2012 complaining about various aspects of the Jeremy Vine show, the website and the Twitter Feed. BBC Audience Services replied to each of these complaints.

BBC Audience Services then wrote saying that the complainant had submitted dozens of complaints over the past 17 months about the Jeremy Vine show, its output, the website and Mr Vine's own Twitter account, and that these complaints revolved around three recurring themes: his disagreement with the selection of items on the show and alleged bias by Jeremy Vine; the website updates; and Jeremy Vine's right to use his Twitter feeds in the way he chose. On each of these issues the BBC had provided the complainant with a clear explanation of their policy and they could not continue to devote such a disproportionate amount of scarce time and resources to responding to these same complaints.

BBC Audience Services said that, in this context, they had applied the expedited complaints procedure. This meant that for the next two years they would not reply to complaints from the complainant submitted directly to production teams or via the central BBC Complaints Unit which related to the Jeremy Vine show unless new and substantive issues raising questions of serious editorial breaches were raised.

The complainant replied seeking clarification about the alleged "dozens" of complaints he had submitted over the past 17 months. He said his records only covered 12 months so he asked the BBC to explain the "dozens" reference. He also asked what constituted a complaint – did this include emails to the show directly, to Jeremy Vine at his BBC email address and/or his Twitter account?

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust saying that he wished to appeal against the decision to subject his complaints to the expedited complaints procedure.

The complainant said that he had sent 19 complaints during the past 13 months, and therefore had sought clarification as to how the BBC concluded that he had submitted "dozens" but had not received an answer to this point. He also questioned what constituted a complaint and explained why the failure to update the programme's website in a consistent and timely manner was highly problematic for him as a listener. In a series of letters he outlined his argument that Jeremy Vine's Twitter feeds ran contrary to BBC guidelines, particularly his decision to block him from accessing his account. Finally, in response to the BBC's claim that they had provided countless explanations of their policy

on these key issues, he said that the responses from the BBC frequently missed the point of his complaints.

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

She explained that the Trust did not adjudicate on every appeal that was brought to it, and part of her role was to check that appeals qualified for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards did not feel the BBC had a case to answer concerning its decision to apply the expedited complaints procedure in relation to complaints about the Jeremy Vine show.

She said that the Complaints Framework Annex B, Expedited Complaints Handling procedure, states:

"The BBC needs to be able to ensure that its complaints procedures are not abused by vexatious complainants or otherwise by persons making repeated complaints which are without substance."

There were a number of criteria which may be relevant but the Head of Editorial Standards' view was that the following two were the most significant:

"The complaint recipients should consider whether to make use of the expedited procedure where a complainant has a history of persistently and/or repeatedly making complaints which:

(a) Are repetitions of substantively identical complaints that have already been resolved; and/or

(b) Although within their remit, are shown on investigation to have no reasonable prospect of success."

The Head of Editorial Standards noted that the majority of the complaints submitted by the complainant concerned the editorial choice of subjects and the treatment of them on the Jeremy Vine show, and it was clear from the BBC's guidelines that this was a matter for the BBC and its creative teams. In this context, BBC Audience Services were necessarily eventually supplying the complainant with near-identical responses irrespective of the specific complaint about choice of item as these issues were a matter for the BBC staff concerned. In this context the Head of Editorial Standards believed it was reasonable to view the complaints as falling within the terms of the procedure as set out above.

The second major recurring complaint about the inconsistent updating of the website was also a case where the Head of Editorial Standards could not see how the BBC could have responded differently or was likely to do so in future to a similar complaint. The BBC had said that it could not guarantee that every website would always be updated at a specific time, priorities and resources necessarily dictating these matters. Again this was clearly a matter for the BBC to exercise its judgment over its priorities. The Head of Editorial Standards therefore did not believe an appeal against the application of the expedited procedure on this matter had a reasonable prospect of success.

The Head of Editorial Standards had noted that the BBC had repeatedly said that Jeremy Vine's Twitter account was a personal one, and that they were happy with its relationship to the show, and that he was not in breach of the appropriate BBC guidelines. Here too the Head of Editorial Standards could not see their response changing, or that there were grounds to consider that there had been a breach of the guidelines. In this context it seemed to the Head of Editorial Standards reasonable to conclude that the complainant's main complaints had become "repetitions of substantially identical complaints" with "no reasonable prospect of success" as the guidelines covering this procedure required. In this context the Head of Editorial Standards could see no reasonable chance of success if this complaint was pursued to appeal.

The Head of Editorial Standards noted that one of the complainant's complaints had led to a change to the web page and she assured the complainant that under the expedited procedure his complaints would still be read and if there was a matter of substance then the complaint would be handled as normal, including acceptance of a need for a clarification or correction if necessary. It would not be ignored.

Finally the Head of Editorial Standards noted that the BBC had suggested that there had been dozens of complaints over 17 months and the complainant had said that he had made 19 complaints during the past 13 months. She appreciated that this difference concerned the complainant but it did not seem to her to make a material difference to the essential issue which was that the BBC were expending resources on replying to similar complaints on which the complainant had already had an answer and knew the BBC's position, and on which he had no reasonable prospect of success.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He said that some of his complaints fell into a fourth category which the Head of Editorial Standards had ignored (factually inaccurate, speculative and biased reporting) and made further comments on those categories of complaints which she had identified. He concluded by requesting that his complaints should no longer be subject to the expedited complaints procedure.

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 Stage 2 response from the Editorial Complaints Unit.

The Committee noted the complainant's contention that some of his complaints fell into a fourth category, that of allegations of factually incorrect, speculative or biased reporting. The Committee agreed that, however the various complaints were categorised, the fact was that they were largely repetitive with no reasonable prospect of success.

The Committee also noted the complainant's statement that he would not make any further complaints relating to "late web page updates" if the appeal against the application of the expedited procedure were allowed.

Taking into account the nature and frequency of the complaints made by the complainant, the Committee was satisfied that the decision not to accept his appeal against the application of the expedited procedure was correct.

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

Lead Balloon, BBC Two, 14 June 2011

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

The complaint

Stage 1

The complainant contacted the BBC having seen a clip from the BBC Two comedy *Lead Balloon* played on the *BBC Breakfast* programme. The complainant said that the clip treated a funeral service in an irresponsible manner and ridiculed the Catholic Mass.

The complainant said that this was offensive to Christians and questioned whether other religions would have been treated similarly. The complainant also wondered whether consideration had been given to the feelings of those who had been recently bereaved and had sought consolation in their faith. The complainant was concerned that all religions should be treated equally and respect shown, particularly in relation to the Crucifixion and the Holy Sacraments. He asked for a copy of the BBC's Editorial Guidelines which, in his view, could not have been followed.

BBC Audience Services responded saying that the BBC recognised that many people had strong religious sensibilities and some might argue that religion should be "off limits" for humorists. The response said that while the BBC would never seek to mock the essence of religion or to cause offence, it was difficult to impose a single set of standards on which everyone could agree. The only realistic and fair approach was to ensure a broad range of comedy so that all viewers felt they were catered for at least some of the time.

The complainant wrote again, saying that he had been given what was probably a standard reply to anyone who made a complaint about the portrayal of religion in a programme. He said that he had not suggested that religion should be "off limits" for humorists but objected to the mockery of those things which were at the heart of a particular religion, as the Sacrament of Holy Communion was for almost all Christians.

The Executive Editor, Comedy Commissioning, wrote to the complainant having discussed the complaint with the producers of the show. He explained the context of the scene, including details of the storyline and character development during successive series. He explained that the joke was firmly on Rick (the central character) whose vanity and sense of victimhood frequently led him to lie or dissemble in an attempt to manipulate his situation to his advantage, ending invariably in his own comic humiliation.

The episode in question had made it clear that Rick's behaviour was unacceptable, other characters had expressly stated that he was wrong and he was "punished" for his behaviour by the storyline.

The Executive Editor said he regretted that the complainant had been offended but he did not believe that the episode had mocked a funeral service or ridiculed Mass; instead, it was the character of Rick who was clearly the target of the comedy. The funeral and Mass were presented as solemn occasions marred by a lone individual whose inappropriate behaviour was not endorsed by the episode, and who was clearly reprimanded by other characters in the show.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process, reiterating his view that it was inappropriate to ridicule a service of Holy Communion, the Mass, that this sacrament lay at the heart of Christian worship and that Christianity was not being treated equally with other religions.

The ECU's Head of Editorial Complaints considered the complaint in relation to the Editorial Guidelines on Religion.

The Head of Editorial Complaints said that although the Mass depicted in the programme was briefly disrupted by the behaviour of the central character, Rick, it was he – not the ceremony or what it represented to believers – who was the object of ridicule. The Head of Editorial Complaints looked in more detail at the story, setting out the ways in which Rick's hypocrisy was revealed during the episode, and concluded that there was nothing that ridiculed the Mass itself. The Head of Editorial Complaints therefore did not uphold the complaint.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust, observing that the previous stages of the complaints system all involved responses from BBC employees who, in the complainant's view, had a vested interest in taking sides with the editorial team and delaying complaints in the hope that complainants would give up.

The complainant reiterated that the complaint was about the use of a solemn funeral Mass as a topic for a sketch, "trivialising the occasion ... making light of taking the wafer, choking on it, obviously intentioned to cause amusement and laughter among those watching the programme". The complainant said that taking the wafer, which to Christians represented the body of Christ, sacrificed on the cross at Calvary, "was one of the most sacred moments of their faith".

Referring to the Editorial Guideline on the religious sensitivity of particular references, including Holy Communion, the complainant said that if the programme had not contravened the guideline, he could not imagine what would have done. The complainant again said that, in his view, equal treatment was not given to different faiths: he could not imagine staging a comedy item in a mosque, so wondered why it was acceptable to use a church as the setting, as had been the case here.

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

She explained that the Trust did not adjudicate on every appeal that was brought to it, and part of the Head of Editorial Standards' role was to check that appeals qualified for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and transcripts of the item in question and 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 the Head of Editorial Standards considered the relevant BBC Editorial Guidelines to be those in Section 12 concerning religion. She said the following guidelines were particularly relevant:

"We should take care to avoid unjustified offence. We aim to achieve this by ensuring our output is not used to denigrate the religious beliefs of others..."

“We must be aware of the religious sensitivity of references to, or uses of, names, images, deities, rituals, scriptures and language at the heart of the different faiths and ensure that any uses of, or verbal or visual references to them are editorially justified within generally accepted standards. Examples include the Crucifixion, Holy Communion, the Qu’ran, the Jewish Sabbath and similar.”

“Drama, comedy and other genres may legitimately cover matters relating to religion, but we should always be aware of the potential for offence.”

The Head of Editorial Standards also had regard to the Guidelines on Harm and Offence, contained in Section 5, in particular the section covering Audience Expectations:

“We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience, taking account of the time and day on which it is available, the nature of the service and the nature of the content.

“The following questions can help determine whether content will be within the expectations of the audience: ... - Does the talent, slot, title, genre or service carry pre-existing expectations that may be challenged by the content?”

Taking the latter points on context first, the Head of Editorial Standards noted that this episode of *Lead Balloon* was first broadcast on BBC Two at 10pm and repeats were also shown after the 9pm “watershed” when the audience expectation would have been for more adult material to be shown. The series was a long running one, with the episode in question coming half-way through the fourth series.

The Head of Editorial Standards thought it could reasonably be argued that the audience would have known what to expect of the series and, in particular, of the lead character, Rick, played by Jack Dee. The Head of Editorial Standards accepted that this type of humour would not have been to everyone’s taste, but suggested that there were plenty of signposts that would have allowed those likely to be offended to have selected alternative viewing ahead of the programme.

Turning to the Guidelines on Religion, the Head of Editorial Standards considered that the complainant had already received well-reasoned responses from both the Executive Editor, Comedy Commissioning, and the Head of Editorial Complaints. As they had both highlighted in some detail, it would be difficult to argue that the point of the episode was to denigrate the religious beliefs of others.

The Head of Editorial Standards regretted that the complainant was offended. However, she did not consider that the appeal had a reasonable prospect of success or that there was a case for the BBC Executive to answer.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated his concerns, noting that the preview was broadcast on BBC One at breakfast, long before the 9pm watershed.

The Committee’s decision

The Committee was provided with the letter from the Trust’s Senior Editorial Strategy Adviser setting out the Head of Editorial Standards’ decision not to proceed and the complainant’s letter asking the Committee to review the Head of Editorial Standards’ decision. The Committee was also provided with the episode of *Lead Balloon* in question.

The Committee noted firstly that the complaint was in response to the clip of the programme shown on *BBC Breakfast* rather than the broadcast of the full episode that same evening. The Committee considered therefore that the Head of Editorial Standards' reasoning with regard to audience expectations around the timing of the broadcast was not relevant to the consideration of this complaint. The Committee did consider, however, that the points made by the Head of Editorial Standards with regard to the established expectations around the content of the programme were relevant, and it noted that the clip in question was the third to be played and came at the end of an interview with Jack Dee which had lasted several minutes. The Committee did not consider that this excerpt from the programme contained material unsuitable for a pre-watershed broadcast and agreed that the clip raised no issues in relation to the Harm and Offence guidelines.

Turning to the guidelines relating to religion, the Committee agreed that the complainant had already received well-reasoned responses from the Executive Editor of Comedy Commissioning and the ECU's Head of Editorial Complaints. The Committee noted the complainant's view that the programme made a mockery of the act of taking the wafer during Mass; however, it agreed that it would be difficult to argue that the point of the episode was to denigrate the religious beliefs of others. The Committee did not agree that in portraying the main character choking on a wafer the Christian faith had been treated with contempt. The Committee concluded that an appeal on the grounds that the Editorial Guidelines on Religion had been breached did not have a reasonable prospect of success.

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

Today, BBC Radio 4, 9 August 2011 and Newspaper Review, BBC Radio 4, 8 January 2012

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

The complaint

Stage 1

The complainant wrote to the BBC saying that coverage of the riots in that day's edition of the *Today* programme had been biased and insensitive. In particular, he cited:

- the description of violent looters and arsonists as "protesters and demonstrators"
- an interviewer asking an arson victim whether he sympathised with those who had destroyed his warehouse
- concentration on the issue of police cuts in an interview with the Home Secretary, Theresa May (as, in the complainant's view, given the unprecedented scale of the riots the police would have had insufficient manpower regardless of the cuts)
- an interviewer's reference to those clearing up after the riots as "Wombles"
- an interviewer's questioning of local councillors in such a way as to encourage them to say that there were reasons other than criminality for the looting.

BBC Audience Services responded saying that, because a presenter's job involved asking the questions likely to be in the minds of informed listeners, the question to the arson victim was a relevant one. The interview with the Home Secretary also focused on a question that would have been on listeners' minds, namely whether the police had lost control of the streets. The issue of police cuts was not discussed until the 13th minute of a 15 minute interview. In the BBC's view this was relevant and not excessive.

The complainant responded requesting answers to his unaddressed points and disputing that any listener would have expected the arson victim to sympathise with those who had destroyed his family business. The complainant regarded the BBC's assessment of listeners' expectations as a clear and direct indication of an unwarranted assumption that most listeners sympathised with the rioters. He said that this was an unacceptable and partisan attitude. He explained that his complaint was about the BBC's overall bias in its riot coverage, of which the BBC's reference to rioters and looters as demonstrators and protesters was an example. While accepting that it was legitimate for the interviewer to focus on the police and to mention government cuts, the complainant asserted that this merely emphasised the lack of balance elsewhere in the programme.

BBC Audience Services responded quoting from the interview with the arson victim and arguing that, in its view, the interviewer had conducted the interview in a professional and proportionate manner. It had not been possible to locate the "Wombles" remark. With regard to the discussion with the local councillors, BBC Audience Services thought the interviewer's question reflected the search for answers about what had caused the riots. She was not excusing the rioters' actions but providing a forum for debate. BBC Audience Services also considered it important to note that one councillor had gone on to identify deeper societal catalysts, and had stressed the growing culture of irresponsibility and disregard of consequences.

Stage 2

The complainant wrote to the Director, BBC News. He maintained that the interviewer's question to the arson victim implied that there were reasons other than random criminality for what had happened to him. He considered this to be an inappropriate, leading question and, together with the questions put to the other guests were examples of the interviewer trying to set the agenda.

In the complainant's view, the interviewer's introduction of the debate into an interview with a man whose family business had just been destroyed was at best insensitive, at worst reprehensible, and was "grinding the axe" of her own particular opinion to an unacceptable extent.

The complainant also raised an additional complaint about the *Newspaper Review* report on 8 January 2012 on an article in the *Independent on Sunday* to the effect that black people were four times more likely to be murdered in the UK than white people. He argued that this report had omitted the statistical fact that the majority of black people murdered were killed by other black people, and that this had created a false impression of violence committed against members of the black British community.

In reply, the Head of Editorial Compliance and Accountability, BBC News, said that she agreed with the BBC's previous response that the interviewer's question to the arson victim was of the kind that many listeners would have liked to put to someone in his position, and she noted that it was an open, straightforward question near the end of a sympathetic interview. In circumstances of soul-searching in all echelons of society about the causes of the violence, it was legitimate to have asked a victim for his take on what was going on. The interviewee, while clearly upset, had demonstrated a command of the situation and had not seemed fazed by the question.

The Head of Editorial Compliance did not think that the complainant's analogy with asking a mugging victim what they thought of their assailants was apposite: a mugging was a one-off event, whereas the burning down of the interviewee's family store had come in the midst of some of the worst rioting and arson that London had seen for a generation. While many people would agree with the complainant's view that pure criminality was the only explanation for the riots, many would not. It was part of *Today's* role to reflect this debate and the interviewer's question had simply invited the guest to contribute to the discussion.

With reference to the interview with the other guests, the Head of Editorial Compliance thought that the phrasing of the interviewer's question had given them an opportunity to put over their point of view, which they had done. Indeed, the councillor had said that the rioting was "nothing short of pure criminality" and another guest had described it as "opportunistic looting".

With reference to the complaint about the report of the *Independent on Sunday* article, the Head of Editorial Compliance noted that the newspaper review was a series of short factual statements of what articles had covered, not of what they might have said had they been better informed or editorially impartial.

The complainant responded, disputing the assertion that, at the time of broadcast, there had already been much soul-searching in all echelons of society about the causes of the violence. He cited the findings of polls by YouGov for *The Sun* and ICM for *The Guardian* in support of his view.

The Head of Editorial Compliance responded, saying that she thought her point had been made by the opinion polls which the complainant had cited: people had been questioning

the causes of the rioting, with a minority of respondents blaming sheer criminal behaviour.

The complainant replied, disagreeing with the Head of Editorial Compliance's interpretation of the polls and noting that criminal behaviour was by far the biggest single reason chosen by respondents. When other anti-social reasons were added, 68% of *Sun* and 73% of *Guardian* respondents attributed the cause of the riots to criminal or anti-social behaviour. Of the other causes debated on the BBC, none registered more than 8% in either poll, and some polled as little as 2%. He noted that, although slightly under 50% of people had blamed pure criminality for the riots, this was still five times more than those who had chosen any other single option. He did not think that this had been proportionately represented in the *Today* programme's coverage.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust. He cited the polls in *The Sun* and *The Guardian* in contradiction of the assertion that there was "soul-searching" in all echelons of society about the causes of the violence, and in support of his assertion that most people agreed that the riots were attributable to pure criminality.

With reference to the interview with the arson victim, the complainant described the comments of the Head of Editorial Compliance as conflating the experiences of a single victim with wider events. Noting that a mugging, rape or murder could come in the midst of other violent events, the complainant argued that, as far as the victim was concerned, the burning down of his family business was a one-off event.

While acknowledging that the BBC provided a forum for debate on such issues, the complainant argued that it sometimes showed either a complete contempt for, or ignorance of, what the public was thinking, and had initially adopted a default position to which it had stuck, despite evidence to the contrary. He argued that, as the sole national public service broadcaster, the BBC had a duty to find out what its audience was thinking before basing its coverage on what he described as a minority and partisan view of the riots.

The complainant also reiterated his complaint about the newspaper review of an article in the *Independent on Sunday* to the effect that black people were four times more likely to be murdered in the UK than white people. He said that, given the sensitive nature of the subject matter, to have quoted the article without qualification was irresponsible, and he queried how it could be justified under the BBC's obligations to impartiality.

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

She explained that the Trust did not adjudicate on every appeal that was brought to it, and part of the Head of Editorial Standards' role was to check that appeals qualified for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and transcripts of the items in question and 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 the Head of Editorial Standards had considered the appeal in relation to the BBC's Editorial Guidelines on Impartiality (section 4) and Accountability (section 19). Because, in her view, the complaint also raised

potential issues of accuracy, she had also considered it against the Editorial Guidelines on Accuracy (section 3).

Complaints handling

The Head of Editorial Standards apologised for the considerable delay the complainant had experienced in receiving a follow-up response from the BBC Executive at Stage 1 and for the Executive's failure to meet its Stage 2 target deadline, although this was only by a couple of days. She said the Trust was greatly concerned by any delay in the handling of complaints and appreciated that this could cause considerable annoyance and frustration to complainants.

With reference to the complainant's comment that at no stage of the BBC's complaints process was any genuinely independent person involved, the Head of Editorial Standards pointed out that the BBC Trust had a dual role as both the BBC's governing body and regulator. In the latter capacity, the Trust engaged Independent Editorial Advisers, who were not employees of the BBC, to investigate and provide advice to the Trust Unit regarding decisions on complaints.

As the complainant had already received an unreserved apology and explanation from the Executive, and the Trust Unit had noted that the handling of the complaint was unsatisfactory, the Head of Editorial Standards considered this matter resolved.

Substantive appeal

The Senior Editorial Strategy Adviser said that, in the view of the Head of Editorial Standards, the interviewer's questioning of the arson victim was entirely appropriate. She had not asked him whether he sympathised with those who had destroyed his business premises. Rather than leading the interviewee, as the complainant had suggested, the interviewer had asked him open questions about how he felt about the perpetrators, why in his opinion they had done what they had done, and whether he had any sense of why this had happened. The phrasing of the last question made it clear beyond doubt that the interviewer was not guiding him towards, and did not expect, any specific answer to her enquiry.

In the view of the Head of Editorial Standards, it was also appropriate for the interviewer to have invited the arson victim to respond to issues wider than the destruction of his business; notwithstanding the misfortune that had befallen him. The interviewee had comported himself with dignity, stoicism and a sense of detachment, and was not a distressed or vulnerable interviewee who ought not to have been invited to comment on such matters. The interviewee's opinion was, in light of his experience, apposite, and the Head of Editorial Standards could see no parallel between his circumstances and that of a Belsen survivor being asked what they thought were the reasons for World War II, as the complainant had suggested.

With regard to the interview with the other two guests, the Head of Editorial Standards thought the phrasing of the question was significant:

"do you accept that first of all, that this is just opportunistic criminality, people taking the chance to steal something just because they can, that there isn't something else beneath this?"

Here, the interviewer was inviting the councillor to state whether he accepted two propositions: that the cause of the rioting was just opportunistic criminality, the corollary of which was that there was not something else behind it. As the Head of Editorial

Standards understood it, both these propositions accorded with the complainant's argument. She could not see how, by phrasing the corollary as a negative statement, the interviewer was leading the interviewee. In her view, the phrase "do you accept..." makes it clear that the interviewer was not seeking to force any particular answer upon the interviewee. In the event, the councillor agreed with both propositions, stating:

"I think that is a fair summary ... This is nothing short of pure criminality."

Following the councillor's expression of his views, the interviewer went on to put to the other guest that:

"It just seems odd ... Mass outbreaks of lawlessness don't normally just happen."

The guest disagreed with this assertion:

"No. This was just opportunistic looting. This wasn't rioting. This wasn't some kind of mass kickback against the system ..."

The Head of Editorial Standards did not accept that, merely by putting an alternative view to an interviewee and inviting him to comment thereon, the interviewer's question was biased. It seemed to the Head of Editorial Standards to have been an entirely appropriate means of facilitating the fullest discussion of a matter – the causes of the riots – on which different views were held. Exactly how many of the population held any particular view at the time was, in her view, less significant than the fact that different views were held.

With regard to the interviewer's reference to "Wombles", the Head of Editorial Standards noted that this arose approximately 146 minutes into the broadcast, immediately after an interview with Home Secretary Theresa May. The exchange between the two presenters went as follows:

"Oh, and here's a line from Twitter this morning, which has been retweeted a lot. 'Last night we needed Batman; this morning we need the Wombles.' And –

The Wombles?

The Wombles. Pick up all the litter. Clear it up. And actually, funnily enough Twitter's getting ... you know ... been accused of ... being involved with a lot of the problems associated with last night – of spreading the word – well there's a tremendous amount going on on Twitter at the moment about clean-up. Riot clean up, as people are co-ordinating and organising going out to help clear up some of the mess in London and elsewhere."

The Head of Editorial Standards said that this was not a tasteless joke, as the complainant had suggested, but a factually accurate report of what was currently happening on Twitter. The tweet to which the presenter referred was a manifestation of a Twitter-facilitated initiative to organise a post-riot clear-up. The Head of Editorial Standards said that an Independent Editorial Adviser's research suggests that those who volunteered to clear up after the riots adopted the name "Wombles" as a humorously self-deprecating badge of honour.

With reference to the complaint about the report on an article in the *Independent on Sunday*, the Head of Editorial Standards could not agree that, given the nature of the newspaper review, it would have been appropriate for such a report to provide anything other than a brief statement of the subject matter of the article. The report had stated that:

"[The Independent on Sunday] finds that white people are half as likely as black people to grow up in poverty, and black people four times as likely to be murdered as white people"

In her view, this was adequate and appropriate to the output, taking account of the nature of the content, the likely audience expectation and any signposting that might have influenced that expectation, and was, therefore, duly accurate.

For these reasons, the Head of Editorial Standards could see no evidence that the substantive appeal had a reasonable prospect of success and did not propose to put it before the Committee.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He noted that the report on the *Independent on Sunday* article was not on the *Today* programme, as had been mistakenly stated by the Head of Editorial Standards. He also set out reasons, with supporting information, for disagreeing with the points in the Senior Editorial Strategy Adviser's letter.

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 Stage 2 finding from the Editorial Complaints Unit and the items in question.

The Committee noted that in his challenge to the Head of Editorial Standards' decision the complainant had commented on the requirement of the appeals procedure that complaints raise a matter of substance. The Committee noted the complainant's view that "A complaint about the BBC's failure to abide by its impartiality guidelines on such a major story, particularly when the complaint is supported by the results of two contemporaneous national newspaper opinion polls, should be regarded as 'a matter of substance'."

The Committee agreed that an allegation of a breach of the guidelines is a potentially serious matter; however, it was mindful that the appeals procedure states:

"Your appeal must raise a matter of substance – in particular, that, in the opinion of the Trust, there is sufficient evidence to suggest that the appeal has a reasonable prospect of success and there is a case for the BBC Executive to answer."

And the question was whether, in the opinion of the Trust, there was a reasonable prospect of success for this particular complaint on appeal.

The Committee also noted the complainant's correction of the name of the programme which contained the newspaper review about which he had complained. The Committee wished to apologise for this error; however, it did not consider that this minor error had affected the substance of the Head of Editorial Standards' decision. The Committee noted that the Head of Editorial Standards' decision was based on a transcript of the item.

The Committee noted that the complainant reiterated the poll results which he cited previously at Stage 2 and in his appeal to the Trust. The Committee agreed that the

questions put to the guests on the *Today* programme were legitimate lines of enquiry at a time when the causes of the recent rioting were being debated nationally. The Committee did not agree with the complainant's view that the interviewers had promoted one view over others in their questions to the guests. The Committee agreed that exactly how many of the population held any particular view at the time was less significant than the fact that different views were held.

The Committee considered the complainant's assertion that to quote the *Independent on Sunday* without providing qualification was in breach of the editorial guidelines on accuracy. The Committee noted the complainant's view that the *Independent on Sunday's* statement was tied to a particular editorial line; however, the Committee agreed with the Head of Editorial Standards that the item had accurately reported what the *Independent on Sunday* had said. The Committee agreed that, taking into account the nature of the newspaper review and the likely audience expectation, there was no reasonable prospect of success for an appeal on the grounds that the accuracy guidelines had been breached.

With regard to complaint handling, the Committee noted the problems which had been experienced by the complainant and wished to apologise again for the considerable delays at Stage 1. The Committee considered that, given the apology and explanation provided by the Executive, the matter was resolved. Other than the acknowledged delays, the Committee was satisfied that the complaint had been handled in accordance with the published procedures.

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