

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/esc_tor.pdf.

The Committee comprises five Trustees: Alison Hastings (Chairman), David Liddiment, Richard Ayre, Sonita Alleyne and Bill Matthews. It is advised and supported by the Trust Unit.

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

The Committee may consider appeals concerning complaints which allege that:

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

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

5.10 The Trust will only consider an appeal if it raises "a matter of substance".²

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

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

¹

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

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

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

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

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

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

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

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

Achievement against these target response times is reported in the BBC's Annual Report and Accounts: <http://www.bbc.co.uk/annualreport/>. In line with its duty to consider topics of editorial concern to the Committee, whether or not such concern arises from a formal complaint, and to commission information requests from the Trust Unit or Executive to support such consideration, the Committee also from time to time requests the Executive to report to the Committee regarding breaches which have been accepted by the Executive and are therefore not subject to appeal to the Committee. The bulletin also may contain findings relating to such cases.

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

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

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

Summaries of findings

Silent Witness, BBC One, 22 April 2012, 9pm

The complainant objected to a scene of sexual violence at the end of an episode of the BBC One drama serial *Silent Witness* which he said he had found “extremely upsetting” and “thoroughly nasty”. The complainant said that it was inappropriate to show such scenes at this time of the evening, and that the BBC had failed to “provide adequate protection for members of the public from the inclusion of offensive and harmful material”. The complainant referred to the fact that the preceding programme had overrun, meaning that those turning on to watch *News at Ten* would have seen the final moments of this episode of *Silent Witness*.

The Committee concluded:

- that *Silent Witness* has an established format as a long-running series on BBC One between 9 and 10pm and the violent content, even though occurring at the end of the episode, was too explicit for this series, on this channel in the first hour after the watershed.
- that this programme was in breach of the Guidelines on Harm and Offence.

The complaint was upheld.

For the finding in full see pages 6 to 13.

Application of Expedited Procedure at Stage 1

The complainant appealed to the Editorial Standards Committee following the decision of BBC *News* to apply the expedited complaints handling procedure to future complaints made by him for a period of two years.

The Committee concluded:

- that the BBC had demonstrated that the complainant had a history of persistently and/or repeatedly making complaints which had been shown on investigation to have had no reasonable prospect of success.
- that it was not proportionate, cost-effective or in the wider interests of licence-fee payers for the BBC to revert to applying the full complaints procedure to the complainant’s correspondence.
- that the expedited procedure should continue to be applied for a period of two years from 14 May 2012.

The appeal was not upheld.

For the finding in full see pages 14 to 18.

News Bulletins, BBC Radio Shropshire, 26 & 27 March 2012

The complainant said that BBC Radio Shropshire News bulletins were inaccurate in reporting the outcome of an inquest into the death of her mother.

The Committee concluded:

- that the wording used by the BBC to describe the condition that the complainant's mother was suffering from, while not strictly accurate, was duly accurate according to the terms of the Editorial Guidelines, in that it had been adequate and appropriate to the output.
- that there were sufficient grounds to suggest a doctor who had given evidence to the inquest had not been misquoted, that the BBC had been entitled to rely on a report from a reputable news agency, and there was also separate, corroborating evidence.
- that there was the possibility that some listeners might have interpreted the BBC's report incorrectly, but that, even without further clarification, the item had been duly accurate with regard to the doctor's statement.

The complaint was not upheld.

For the finding in full see pages 19 to 25.

Watson & Oliver, BBC Two, 7 March 2012, 7.30pm

The complainant said that the programme contained sexual content which was inappropriate at 7.30pm when young children are still watching television.

The Committee concluded:

- that none of the three sketches specifically referred to by the complainant would be likely to offend an adult audience.
- that, while one of the sketches would be unlikely to cause concerns with regard to protecting children, some parts of the other two sketches were questionable in terms of protecting children and some of the content of this programme was at the margins of acceptability for this time of the evening.
- that, overall, the comic innuendos (which would be beyond the comprehension of the youngest children) did not breach generally accepted standards or the guidelines regarding scheduling and the watershed, which are there to protect younger viewers.

The complaint was not upheld.

For the finding in full see pages 26 to 37.

Appeal Findings

Silent Witness, BBC One, 22 April 2012, 9pm

1. The programme

At the time of the complaint the BBC One drama serial *Silent Witness* was in its fifteenth series and regularly averages audiences of around 6 million. It focuses on a team of forensic pathology experts and their investigations into various crimes. The episode in question concluded with a scene containing an act of sadistic sexual violence. The programme was scheduled to end before the News at 10pm but because of an over-running programme earlier in the schedule, viewers tuning in for the *BBC News at Ten* would have seen the end of this programme.

2. The complaint

Stage 1

The complainant contacted BBC Audience Services as he had turned on his television to watch *BBC News at Ten* and had been confronted by “seriously disturbing scenes of utter degradation, extreme violence with sexual overtones”. BBC Audience Services had replied that *Silent Witness* was now in its fifteenth series and its audience was familiar with the content. The Executive Producer added to this, explaining the context of the scene, which established the police woman character’s complicity in the crime and the brutality of the male prison officer character. It “was not an attempt to gratuitously shock the audience”. She added that the series was scheduled after the 9pm watershed and had received wide publicity with a warning about the content before both episodes of the two-part story.

The complainant was not satisfied with the reply. He stated that viewers tuning in for the main evening news could not be expected to have been watching earlier and heard the warnings before the programme.

The Executive Producer replied on 11 May 2012. Although she understood that the complainant had not watched the programme, she thought that he may be reassured if he understood “how much care and attention had been paid to the inclusion of the final scenes” in this episode. The Executive Producer explained how the plot had prepared viewers for the final scenes and that these had not been “unnecessarily graphic and the sexual assault was implied, not shown”.

The Executive Producer explained that steps had been taken to mitigate the overrun of the drama once it was realised that *The Voice* had overrun its slot.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 14 May 2012 as he was dissatisfied with the responses to his complaint. He raised the following issues:

- What demand was there for this kind of material, which in his opinion was graphic and especially shocking as it was unexpected?
- Why broadcast this material directly before the main evening news when people would be likely to view it unexpectedly? Warnings earlier in the evening were no use to these viewers.

- The word “adult” was misused, as this suggested that people who do not like this material are not “adult”. Children and vulnerable people might believe this behaviour is acceptable or excusable as it is classified as “adult”.
- The need to “overhaul your complaints procedures so that future complaints will receive a proper answer that addresses the issues raised and demonstrates that complaints have been taken seriously”.

A Complaints Director at the ECU replied on 14 June 2012. When considering the complaint in relation to the BBC’s Editorial Guidelines, he stated that the BBC is not asked to broadcast material which may never risk causing offence, but that it should meet “generally accepted standards”. In terms of violent content, there should be editorial justification and clear signposting. On this basis, the ECU considered that the content of this episode was acceptable for broadcasting as it had clear editorial justification demonstrating the “level of violence and brutality” of the prison officer and the complicity of the detective. The final scene “conveyed the essential message about both characters and their past actions in a way which might not otherwise have been possible”. However, the Complaints Director agreed that “it could certainly be argued that this might have been achieved in a less graphic fashion” even though there was editorial justification for the scene and “it was not without purpose or contribution to both plot and characterisation”.

Although the question of audience expectation would not apply to viewers who were not familiar with the series, the ECU considered the impact of this content on regular viewers. The Complaints Director felt that “there is a difference between the sort of content with which regular viewers would be familiar (including scenes of the aftermath of death) and this sort of sexual violence”. The relatively high number of complaints seemed to bear this out. He believed that “the programme-makers may have misjudged the feelings of the audience about this sort of material, and the leeway that the audience would permit them based on previous episodes”. However, there were other factors to be taken into account such as the announcement at the beginning of the programme warning that the programme contained “scenes some viewers may find upsetting, and violent scenes” and that the scene came right at the end of the episode.

The Complaints Director believed that there was a degree of signposting within the drama that would have prepared viewers for the violent scene. The ECU set out in detail the way in which viewers would have been introduced to the enquiry into a brutalised corpse and that the final scene was a flashback explaining how the injuries were incurred. He felt that the most graphic detail was not shown, although by the end of the scene viewers would have been clear about the nature of the assault. “This scene therefore partially showed a violent sexual assault and the aftermath of it ... it was undoubtedly violent, unpleasant viewing, which in my view was at the very limit of what would be acceptable on this type of programme at this sort of timeslot.”

The ECU had raised the complainant’s concerns about the handling of the complaint with those responsible. It was felt that this had been handled appropriately and had addressed the concerns raised.

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

The complainant replied to the ECU on 4 July 2012 copying his letter to the BBC Trust.

The complainant stated that:

Turning on the television for the main evening news on BBC One, he encountered material he found “extremely upsetting” and “thoroughly nasty”. The responses so far had failed to address this point. The programme was scheduled at such a time when people who do not wish to view this type of programme could reasonably be expected to be tuning in to watch the main evening news. Announcements about the content at the start of the programme were irrelevant in this situation.

The complainant questioned the standards which permit such scenes at this time of the evening when even regular viewers complained about the content. The BBC had failed to “provide adequate protection for members of the public from the inclusion of offensive and harmful material” as set out in the Editorial Guidelines. At this time of the evening older children and teenagers would still be watching television. There was a case for moving the watershed to later in the evening.

The ECU justified the inclusion of the scene wholly in terms of the programme’s internal storyline. They failed to take into account that he viewed “this scene entirely out of context” as he “accidentally” saw a programme he was never likely to watch.

The BBC should set up “a more satisfactory system to represent the views of TV Licence payers”.

3. Applicable Editorial Guidelines

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

Section 5 – Harm and Offence

Introduction

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

Creative risk-taking is a vital part of the BBC’s mission. However, in all our output, the greater the risk, the greater the thought, care and planning required to bring creative content to fruition. We must be sensitive to, and keep in touch with, generally accepted standards as well as our audiences’ expectations of our content, particularly in relation to the protection of children. Audience expectations of our content usually vary according to the service on which it appears.

When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted. Such challenging material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

Generally Accepted Standards

The Agreement accompanying the BBC Charter requires us to apply “generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material”. The understanding of what constitutes ‘generally accepted

standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification.

Context

Context includes, but is not confined to:

- the surrounding editorial material
- the service on which the content is available
- the time at which it is available
- other programmes or content that are available around the programme or content concerned
- the likely size and composition of the potential audience and likely expectation of the audience
- the harm or offence likely to be caused by the inclusion of the particular content in output generally, or in output of a particular nature or description
- the extent to which the nature of the content can be brought to the attention of the potential audience, for example, by signposting and content information
- the effect of the content on audiences who may come across it unawares.

When making our judgements, these factors will not necessarily carry equal weight.

Audience Expectations

5.4.1 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.

Violence

5.4.27 Our audiences, particularly children, can be frightened or distressed by the portrayal of both real and fictional violence. We should make very careful judgements when we plan to include violence in our output; there is increasing public concern about violence in society in general and as portrayed in the media, both in factual and fictional content.

Consideration should be given to the editorial justification for any depiction of violence, and violent content should normally be clearly signposted...

Our editorial judgements need to consider a number of factors which, in combination, can increase the impact of violence, both in factual or fictional content:

...

unusual or sadistic methods of inflicting pain, injury or death

sexual violence

...

4. The Committee's decision

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

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

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. The Committee was asked to consider whether generally accepted standards had been met taking into account the subject and nature of the content, the likely audience expectation, the harm or offence likely to be caused by the inclusion of this particular scene, the extent to which the nature of the content can be brought to the attention of the potential audience and the effect of the content on audiences who may come across it unawares. It was noted that the Guidelines on Violence, which form part of the Guidelines on Harm and Offence, specifically require taking into account the editorial justification for this depiction of violence. The Committee also noted that it was required to consider the likely impact on the audience of this scene of sexual violence in terms of its sadistic method of inflicting pain and injury.

The Committee noted that this was the first episode of a two-part drama in which the team investigate various murders associated with Redhill prison. The team suspect that the prison staff are complicit in illegal drug activities and maybe the murders of various inmates. The final scenes are a flashback to the prison officer Kessler carrying out an assault and this is seen from the point of view of the investigating police officer, Bridges. The audience then realise the extent of the prison officer's corruption and that Detective Inspector Bridges is complicit as she does not report what she has seen.

The Committee noted that in the lead-up to the final scenes, Harry Cunningham, one of the team of forensic pathologists working on the case, is given a folder containing photos of a crime scene. He opens the folder and there is a brief shot of a photo with a body lying on its face covered in blood. Harry is told that this is the "sodomised corpse of Craig Potter, drug dealer and pimp". Apparently Kessler and Bridges are involved in the crime. In the final scenes, DI Bridges is shown in flashback approaching a toilet block. The door of a cubicle is closed and a pool of blood is seeping out from under the door. There is a person moaning on the floor who is partially obscured by the cubicle. The scene then cuts to the present day with DI Bridges returning home to a barbecue and her young son running up to hug her. She is clearly traumatised from this memory and stands rigidly whilst her son hugs her. Returning to the flashback, the prison officer, Kessler, opens the door and steps out carrying a long piece of wood with blood on it and on his shirt. The figure of a man from the waist up is seen lying on his front on the toilet floor when the door is opened. He is moaning and asking Bridges for help. Kessler intimates that she should help him cover up the crime; he then turns to the prone figure on the floor and kicks him stating that he "better not have AIDS". As Bridges leaves the toilet block, Kessler closes the toilet door to resume the assault.

The Committee noted that the programme carried a pre-transmission announcement stating "with scenes some viewers may find upsetting and violent scenes".

Although the ECU concluded that the programme did not constitute "a serious breach of the editorial standards of the BBC", the Committee noted that the Complaints Director believed that

the programme-makers “might have done more to recognise the risk that their viewers would be taken aback by the scene, and to minimise the risk of offence through more careful editing”.

The Committee noted that the BBC has carried out audience research into attitudes towards violence on television (Reviewing the Acceptability of Violence to Audiences – March 2010). In the section dealing with Sexual Violence, respondents were asked about their attitudes to sexual violence and “the vast majority of our respondents did not find scenes of sexual violence objectionable, provided it was an essential part of a dramatic story and did not appear to be gratuitous”. It was also noted that in the section dealing with Violence in Post-watershed Drama, “Respondents made it clear that programme-makers had to take care with the levels of violence within their dramas. Even a popular and long-running series like *Waking the Dead* was in danger of alienating viewers if the content was too extreme.”

The report also specifically looked at BBC One and amongst its conclusions found that, “There was a general feeling amongst respondents that terrestrial channels had a greater responsibility to schedule carefully and be more circumspect when it came to content, as they were readily accessible to all.”

The Committee noted that this two-part drama received 632 complaints in total about the violent content. Of this total, 258 complaints were received before the broadcast of the second part and 26 specifically mentioned being caught unawares whilst tuning in for the *BBC News at Ten*.

The Committee took into account that *Silent Witness* is a long-running series which investigates the aftermath of violent crimes. This is carried out through forensic analysis and does not necessarily involve the re-enactment of the most violent aspects of the crimes. Although many viewers are drawn in by the criminal investigations, they also watch the drama as entertainment particularly for the development of the lives of the regular characters. Taking this into account, the Committee believed this episode was noticeably darker in tone and included a more explicit depiction of sexual violence in the final scenes. The Committee recognised that there is a tolerance for violence in drama and that the most explicit scenes in this case were at the end of the episode. However, on this occasion, it was felt that the final scenes showed a particularly sadistic example of sexual violence. It was noted that the full extent of the attack was shielded from viewers by the toilet door, but the sounds, dialogue and the prone figure on the floor indicated the nature of the attack. When the prison officer emerged from the toilet holding the bloodied stick with a pool of blood on the toilet floor, viewers were left in no doubt that an act of sexual violence was being carried out. The Committee felt that this level of explicitness of sexual violence would have exceeded viewers’ expectations of this long-running series. Although complaints are only one factor when considering offence, the high number received for this two-part story indicated that regular viewers as well as those unfamiliar with the drama were concerned about its content.

The Committee concluded that the final scenes in the toilet block were in breach of the Guidelines on Harm and Offence as they exceeded audience expectations for this series as they depicted a sadistic method of inflicting pain, injury and death. The Committee acknowledged that there may be occasions where, exceptionally, such scenes may be shown when a drama has particularly high creative ambitions and has taken appropriate measures to signal that to the audience. However, *Silent Witness* has an established format as a long-running series on BBC One between 9 and 10pm and the Committee concluded that the violent content, even though occurring at the end of the episode, was too explicit for this series, on this channel in the first hour after the watershed.

The Committee noted that viewers tuning in to view the *BBC News at Ten* would have seen the last four seconds of the final scene if they had switched on at precisely 10pm. Although this scene was followed by a trail for the next episode, the end credits and a promotion for *The Syndicate*, many viewers do tune in before the start of a programme and would then have seen more of the final scenes than just the last four seconds.

The Committee noted that the Complaints Director of the ECU stated that "it was very unfortunate that the delay in the broadcast of the programme led to this scene being aired at a time when viewers were turning to the channel for the evening news. I think that more thought ought to have been given to the possibility of this occurrence".

The Committee noted that BBC Vision was asked for its comments on the overrun of *Silent Witness*, which led to *BBC News at Ten* starting late. BBC Vision explained that

"the adjustment to the scheduled timings was very small and a small overrun to a programme's billed time is a regular occurrence, which does not necessarily trigger additional editorial scrutiny. Schedules are billed by convention using 5-minute time intervals but there are many complicating factors, including variable programme durations, which mean that the actual start and finish times can end up being before or after the billed junction time by a number of minutes. In this case, *Silent Witness* overran the billed finish time by 90 seconds and the news which followed was two minutes late. This is all well within the parameters of a 'normal' programme junction and would not have triggered any extra editorial scrutiny beyond that carried out for the original schedule, which was the same as ever with *Silent Witness* at 9pm followed by BBC News at 10pm."

BBC Vision went on to explain that those concerned with the scheduling operation

"would not necessarily be aware of the content of specific scenes within these programmes and would assume that a small and routine change like this would be unlikely to present any problems providing that the programme is compliant for a post-watershed slot on BBC One, which it was."

BBC Vision added that

"when a programme is scheduled at 9pm clear consideration is given to the fact that this is just after the watershed and that the first part of the programme should receive a greater degree of editorial scrutiny for any content that would not qualify as pre-watershed suitable. The compliance threshold does not increase again around the end of the programme and although we would be mindful of what follows, the news will itself often contain strong themes and sensitive stories and at that time the news would not be regarded as a programme that attracts a high proportion of children. It's clear that viewers will often end up watching a part of a programme after the watershed without having seen any warnings given at the start and it's also clear that viewers coming in for a programme will often see the end of the previous one, even when it finishes well within its billed time. The key point is that the programme needs to be compliant for a 9pm slot on BBC One, which this was, the appropriate warnings were given at the start but there is always the possibility that some viewers will stumble across strong content that they have not been warned about."

The Committee took into account that scheduling overruns do occur. The Executive Producer had explained that *The Voice* had been edited very close to transmission and had overrun by several minutes. The Committee noted he said that "steps were taken to mitigate for this

overrun by shortening the number of programme-trailers in the 9pm junction before *Silent Witness* began but the delayed start-time still meant that *Silent Witness* continued for 90 seconds past 10pm". The Committee was surprised that stronger action had not been taken to keep *The Voice* within its scheduled time.

The Committee noted that BBC Vision's response had stated "the scheduling team at the BBC would not necessarily be aware of the content of specific scenes within these programmes and would assume that a small and routine change like this would be unlikely to present any problems". The Committee acknowledged that it was highly probable that material that was suitable for transmission in a post-watershed slot would also be suitable for transmission in the following slot (up to 5.30am). The Committee noted that, more than most output, news is a fixed point of the schedule and, as such, many viewers consider it "an appointment-to-view" programme.

The Committee noted that complaints had been received from viewers tuning in at 10pm to watch the main evening news. The Committee was mindful of its conclusion that this episode of *Silent Witness* had been inappropriate for its 9pm broadcast, irrespective of the schedule overrun on the day. The Committee considered, however, that the expectations of the audience tuning in for the News at Ten may be different from those for the preceding programme. The Committee was aware that no mechanism exists to highlight a particularly strong scene in the event of an unexpected over-run. It asked for the BBC's Executive to consider the issues raised and return to the Committee with its views.

The Committee concluded that this programme was in breach of the Guidelines on Harm and Offence. The Committee acknowledged that compliance procedures had been followed for the individual programmes. However, the wrong editorial judgment had been made on this occasion and this episode was not suitable for broadcast on this channel at this time, taking into account audience expectations.

The Committee wished to apologise to those viewers who had complained about the content of this episode. In particular, the Committee wished to apologise to those viewers who had tuned in for *BBC News at Ten* and been taken unawares by the final scenes.

Finding: Upheld

Application of Expedited Procedure at Stage 1

1. Background

The complainant appealed to the Editorial Standards Committee following the decision of BBC News to apply the expedited complaints handling procedure to future complaints made by him for a period of two years.

On 14 May 2012 BBC News wrote the following to the complainant:

“In accordance with the BBC’s framework for handling complaints, we must inform you that the BBC’s expedited complaints handling procedure will now be applied to any complaints you make.

For the period of two years from the receipt of this email, we will continue to read any complaints you submit via the BBC’s central handling unit, but they will not be investigated unless ‘they appear to raise a substantive issue or disclose a serious prima facie case of a breach of the Editorial Guidelines where there is a significant prospect that the complaint might be upheld’. Any complaints currently outstanding will continue to be processed.”

The version of the Complaints Framework that applied in this case, the May 2010 version, was the one that was in force at the time of the BBC’s email to the complainant. A revised Complaints Framework was put in place from 26 June 2012.

The applicable Complaints Framework included the following:

“Regular or repeated complaints

The BBC has a duty under its Charter and the Agreement with the relevant Secretary of State to ensure that it has proper procedures in place to deal with complaints, and to ensure that it gives due consideration to complaints. However, within this framework 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...

The expedited procedure

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; and/or
- (c) in the case of the ECU, fall outside its remit; and/or
- (d) after rejection by the ECU or the department concerned, are persistently and repeatedly appealed unsuccessfully to the BBC Trust or the BBC Trust’s Editorial Standards Committee.”

The following provisions of the Charter were also relevant to consideration of this case:

- Article 22: "The Trust is the guardian of the licence fee revenue and the public interest in the BBC."
- Article 23(d): "In exercising all its functions, the Trust must act in the public interest and, in particular, it must...exercise rigorous stewardship of public money."
- 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."

The BBC relied in its reasoning to the complainant on point (b) of the expedited process, above. That is, the complainant had:

"...a history of persistently and/or repeatedly making complaints which... are shown on investigation to have no reasonable prospect of success."

It also drew on the Charter provisions, above, relating to "appropriate, proportionate and cost effective" complaints handling.

The BBC told the complainant that he had made at least 29 complaints in the first 19 weeks of 2012. He had escalated a number of them but, at the time of writing (14 May 2012), none had been upheld.

The construction of the complaints made them particularly time-consuming to deal with, involving complaints handlers in extra work, the BBC told the complainant.

The BBC also wrote that it had noted comments the complainant had made on a non-BBC website which suggested the complainant had deliberately withheld information and pursued complaints through the process, rather than seeking genuine resolution.

The BBC told the complainant that, overall, the correspondence now represented a disproportionate use of BBC staff time and consequently of licence fee resources.

2. Appeal to the BBC Trust

The complainant initially appealed to the Trust on 19 May 2012, with further additions to his appeal during May and June 2012.

He raised the following points in relation to the May 2010 version of the BBC's Complaints Framework: that the BBC took into account evidence that it should not have done in coming to its decision; and that the BBC's grounds for applying the expedited procedure could not be substantiated.

3. The Committee's decision

The Committee considered the complaint in relation to the relevant sections of the May 2010 version of the Complaints Framework, and the relevant sections of the Charter.

In reaching its decision the Committee took full account of the available evidence, including (but not limited to): the editorial adviser's report; the complainant's appeal; all the correspondence between the complainant and the BBC for the relevant period that was available from the BBC's correspondence database; and a number of subsequent comments and submissions from the complainant.

The Committee considered the first point of the complainant's appeal, which was that the BBC had taken into account evidence that it should not have done in coming to its decision.

This related to comments, allegedly made by the complainant, on a website/blog principally concerned with criticism of the BBC. The Committee noted that the complainant had declined to say whether the comments were made by him. The Committee also noted that language used by the blogger on the website/blog referring to his profile was nearly identical to that used by the complainant in his profile on a social media website, which was in the public domain and easily searchable. It also noted that sections of correspondence, sent from the BBC to the complainant, were reproduced on the website/blog. Looking at the evidence, the Committee considered that, on the balance of probabilities, the comments on the website/blog had been made by the complainant.

The Committee noted that all the information drawn on by the BBC when making its initial decision, and by the editorial adviser subsequently in investigating the complaint, had been fully in the public domain. The Committee appreciated the complainant's strength of feeling on the issue, but it did not consider there had been any violation of the complainant's privacy or personal data as suggested by the complainant.

The comments on the website, the Committee noted, included a description of how "fun" had been had "toying with a complaints weasel" and how, during correspondence on a complaint, it had been possible to keep "some powder dry", in other words, to withhold information.

The BBC, it was noted by the Committee, said it had not relied on the evidence from this external website/blog before the decision was made to apply the expedited procedure. However, it was noted that the evidence had been considered relevant because it suggested the complainant was sometimes motivated by wanting to engage with the BBC in point-scoring, rather than seeking genuine resolution.

The Committee then looked at the second element of the complainant's appeal: that the BBC's grounds for applying the expedited procedure could not be substantiated. The principal reason given for the BBC's decision was the volume of complaints made which, on investigation, were demonstrated to have had no reasonable prospect of success.

The Committee fully accepted the complainant's point that it was not just a matter of how many complaints an individual had made that was important here; it agreed it was also a question of what the merits of the complaints were. The Committee examined the complainant's correspondence record with this in mind.

The Committee had some criticisms of the BBC's lack of consistency in logging and responding to all correspondence. This criticism particularly applied to the direct responses from programmes that appeared sometimes not to have been forthcoming, or at least not to have been logged centrally. In some instances the complainant had apparently received no reply at all, the Committee observed.

For these reasons it had been difficult to analyse the entire correspondence record of the complainant, although the complainant himself had been able to supply some of the missing material.

Notwithstanding these difficulties, the Committee had at its disposal a substantial file of material which it considered was sufficient to make an informed decision about the appropriateness of applying the expedited procedure. The Committee noted that out of 26 complaints looked at from the BBC's records:

- Six had been progressed by the complainant to Stage 2 of the complaints process
- Out of these, none had been upheld by the Editorial Complaints Unit
- Two of these complaints had then gone to the BBC Trust at Stage 3
- One had not been allowed on the grounds that it did not have a reasonable prospect of success
- One, concerning the accuracy of a headline on Twitter, was upheld (this uphold came after the BBC's initial letter to the complainant which stated that none had to their knowledge been upheld).

Regarding this one upheld complaint, the Committee was mindful of one of its previous findings:

(http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/jun.pdf) concerning the application of the expedited procedure in another case. The Committee agreed in that instance that the upholding of a complaint did not necessarily undermine an overall picture of a history of persistently and/or repeatedly making complaints which had no reasonable prospect of success. The Committee considered that the same reasoning applied in this case. The Committee was also mindful that application of the expedited handling procedure did not mean that future complaints would not be taken forward if they raised a matter of substance.

The Committee did not restrict itself to looking at just those complaints that had progressed beyond Stage 1, but also considered the remainder of the correspondence file and the complainant's comments, made as part of his appeal, on numerous individual complaints. The Committee concluded that there was nothing further in the correspondence file to significantly alter the overall picture of the complainant's history.

Having read the correspondence, the Committee agreed that the complainant's particular style of communicating took additional time to deal with. The Committee noted his practice of interposing comments into correspondence from the BBC thus making correspondence long and unclear. There were also instances where his points were elliptical and difficult to understand without further research. The Committee noted the BBC's estimate that, because of the frequency of the complaints, one website complaints handler was (at the peak of the correspondence) spending 10 per cent of their time on dealing with correspondence from the complainant. In conclusion, the Committee agreed the BBC had demonstrated that the complainant had a history of persistently and/or repeatedly making complaints which had been shown on investigation to have had no reasonable prospect of success.

The Committee also agreed that it was not proportionate, cost-effective or in the wider interests of licence-fee payers for the BBC to revert to applying the full complaints procedure to the complainant's correspondence. It confirmed that the expedited procedure should continue to be applied for a period of two years from 14 May 2012.

The Committee noted that this means that the BBC will continue to read and consider the complainant's correspondence but will only investigate where it appears there is a substantive

issue or a serious prima facie case of a breach of the Editorial Guidelines and there is a significant prospect that the complaint might be upheld.

Finding: Not upheld.

News Bulletins, BBC Radio Shropshire, 26 & 27 March 2012

1. Background

On 26 and 27 March 2012 BBC Radio Shropshire broadcast news bulletins and a background story which included reports on the inquest into the death of the complainant's mother. The relevant items for this appeal were a news bulletin at 16:00 (repeated at 17:00, 18:00, and 19:00) on 26 March, and a background piece the following morning, at 07:40 on 27 March 2012.

The complainant raised several issues in relation to these reports and to other, related reports. The decision of the BBC Trust's Head of Editorial Standards was that some of these issues should not proceed to the Editorial Standards Committee. The complainant challenged this decision and her challenge was considered at the ESC meeting of 8 November 2012. The Committee agreed with the decision not to proceed with those elements of the appeal.

The Committee's decision regarding the admissibility of the other points has been published and is available at:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/8_nov.pdf

This appeal concerned the remaining two issues which the Trust's Head of Editorial Standards agreed should progress.

The Committee was provided with full transcripts of the news bulletins in question.

First element of the appeal

The extract that was relevant to the first element of this appeal was the following:

"The family of a Shropshire woman who died 14 months ago say they're considering legal action for clinical negligence and have also asked West Mercia Police for an Adult Protection Serious Case Review. This – despite an inquest which today returned a verdict of death from natural causes.

[Name of complainant's mother] was 90 when she was taken ill at the [name and location of care home] and died from a **rare form of dehydration** and pneumonia.

Her family didn't attend the hearing..."

The complainant said that her mother's dehydration was not a "rare form" but it was the severity of the dehydration that was rare. The bulletin had therefore been inaccurate, said the complainant.

Second element of the appeal

The transcript extract that was relevant to the second element of this appeal was the following:

Presenter: One of Shropshire's biggest care providers has been praised by a coroner after an inquest finding that a 91-year-old resident died of natural causes. But [the deceased's] unhappy family say they are considering

legal action for clinical negligence. Tim Page has been following this sad case for us. So remind us of the background to this story, Tim.

Reporter: [XXX] was taken ill at the [YYY] care home in [location] last year. She had dementia, severe arthritis, a rare form of dehydration and a suspected urinary tract infection and pneumonia, and she died last January. The consultant who admitted her to hospital in [location] said it was only the third case like this he'd come across and **it was always going to be terminal, no matter what care she received**. She didn't want to go to hospital, her family asked for her to stay at the home, but [ZZZ], who was manager there at the time, says she got so ill they had to admit her.

[ZZZ] [clip of earlier interview with her]: She was 91, she was taken ill late December of 2010 and she just got gradually worse until she had to be admitted into hospital on the 5 January 2011.

The complainant asked whether the admitting consultant at the hospital, quoted in the report above, had been quoted accurately and in context. She questioned whether it should have been made clear by the reporter that the consultant was referring only to her condition and treatment by the time she arrived at the hospital, and not to any inevitable outcome of the condition as she might have had it before.

2. The complaint

Stage 1

On 29 April 2012 the complainant contacted the BBC to say that two news reports, on 26 March at 16:00 and on 27 March at 08:00, were biased against her family in the way that Radio Shropshire had reported the coroner's verdict on the death of her mother. The BBC responded on 4 May 2012, explaining why it considered the reports had reflected both sides of the story and were fair (at this stage the complainant did not raise the specific issues considered in this appeal).

The complainant wrote again on 5 May 2012, giving further details of why she thought the reports were biased against her family. She also raised one of the issues which form this appeal, saying: "Lastly, it was NOT a rare form of dehydration. It was the severity that was rare."

The BBC responded on 9 May 2012 and included a substantive reply from BBC Radio Shropshire. It responded in detail to the other issues, concerning alleged bias, saying it considered the reports were fair and accurate. There was no specific response to the complainant's point about the form of dehydration.

Stage 2

The complainant contacted the Editorial Complaints Unit (ECU) on 11 May 2012, forwarding the letters she had written to the BBC at Stage 1. The ECU responded on 11 June 2012, apologising for the delay caused by having to obtain the broadcast material from Radio Shropshire.

The ECU wrote further on 27 June 2012, setting out the points that would be investigated. The complainant responded on 30 June 2012 with further clarification. The point, as duly amended, that was investigated by the ECU of relevance to this appeal was whether:

“The bulletins were inaccurate in that they described the cause of your mother’s death as a rare form of dehydration when, in fact, it was the severity of the dehydration that was rare.”

On 24 July 2012 the ECU wrote to the complainant that it would not be upholding any of the elements of her complaint, including the above point. The ECU noted that a complaints director stated that he had noted the contents of a hospital “sudden death” form and of a letter to the coroner from a consultant physician. From these he had concluded that he could not agree with the complainant that it was inaccurate for the bulletins to have described the dehydration as a “rare form”. A further exchange between the complainant and the ECU followed, with some clarifications by both. The ECU’s conclusion, however, was unchanged.

Appeal to the BBC Trust

The appeal, as initially received by the Trust on 17 August 2012, consisted of forwarded correspondence from the previous stages, as above. The complainant sent some local press clippings to the Trust on 7 September 2012 as further background material.

On 11 October 2012, the BBC Trust’s Head of Editorial Standards wrote to the complainant with the decision that only one of the four points raised by the complainant on appeal should proceed to the Editorial Standards Committee (Point A below). The Head of Editorial Standards included the full transcripts of the coverage on 26 and 27 March 2012 of her mother’s inquest. The complainant challenged the Head of Editorial Standards’ decision not to proceed with some elements of the appeal on 12 October 2012, and raised a number of new points in relation to the additional transcripts that had been supplied to her. One of these new points was judged by the Head of Editorial Standards to be closely related to the existing matter that was being investigated (Point B below).

The complainant raised the following two points in relation to the accuracy of the reports:

- Point (A) the complainant’s mother’s dehydration was described as a “rare form”, when it was the severity of the dehydration that was rare.
- Point (B) the admitting consultant at the hospital where her mother was taken was either misquoted or quoted out of context when he was reported as having said “it was always going to be terminal, no matter what care she received”.

3. Applicable Editorial Guidelines

The Editorial Guidelines on Accuracy are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The following Guidelines are relevant to this case:

Section 3: Accuracy

Introduction

The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC...

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.

Principles

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 ... or otherwise undermine our audiences' trust in our content.

Practices

Gathering material

3.4.1 We should try to witness events and gather information first hand. Where this is not possible, we should talk to first hand sources and, where necessary, corroborate their evidence...

Material from Third Parties

3.4.5 Material supplied by third parties needs to be treated with appropriate caution, taking account of the reputation of the source.

We should normally only rely on an agency report if it can be substantiated by a BBC correspondent or if it is attributed to a reputable news agency...

4. The Committee's decision

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

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

First element of the appeal

The Committee considered the first element of the complainant's appeal: that the complainant's mother's dehydration was described by Radio Shropshire as a "rare form" when it was the severity of the dehydration that was rare.

The Committee noted that the complainant's mother had suffered from hypernatraemia, among other things, before she died. The Committee considered a medical definition of this type of dehydration and understood from expert evidence that the complainant was factually correct when she stated that hypernatraemic dehydration was not rare. The Committee noted that the complainant had indicated that she was in dispute with the care home where her mother had lived and that the complainant was critical of aspects of her mother's care.

The Committee also noted the complainant's comments at Stage 2 when she said:

"The question that needs addressing was how did a woman in a well-respected care home get so severely dehydrated ... that the hospital was unable to reverse her condition."

This appeal raised issues requiring consideration of the guidelines relating to accuracy. The Committee agreed that Section 3.4.5 of the Accuracy Guidelines (which contain details on

obtaining Material from Third Parties) was particularly relevant to this appeal. This section makes it clear that an agency report should only normally be relied on if it can be substantiated by a BBC correspondent or if it is attributable to a reputable news agency.

The Committee was mindful that the Radio Shropshire reports had been based on a report from news agency copy, as well as material supplied by the deceased's family.

The Committee considered the relevant extracts of the original copy from the news agency, which had included the following:

"Admitting consultant [name of doctor] told the inquest Mrs [XXX] suffered from a rare form of dehydration.

He said: 'In my entire career I think this is the third seriously bad case of hypernatremic dehydration. It is only really seen in elderly people, often those who, like Mrs [XXX] suffer from dementia, and babies, so both ends of the life scale.

'It comes on very very gradually, so the body compensates and the high levels of sodium mask the problems. Then when help is administered, the re-addition of the fluids actually causes more damage to the brain. Because the body compensates for the dehydration it's very hard to spot this type of dehydration...'"

On the basis of evidence provided to the Committee, it agreed that the news agency concerned was reputable.

Additionally, the Committee noted the BBC's view that the wording used in the reports could be corroborated from other sources. The Committee considered a letter that was written to the coroner from the consultant regarding the treatment of the complainant's mother in hospital. The Committee noted that it stated:

"When I reviewed her [the complainant's mother] ... the next morning her blood tests were available showing profound anaemia, raised white cell count and CRP suggestive of sepsis and dramatically abnormal metabolic results. The metabolic abnormality was severe hypernatraemic dehydration of such a degree that we rarely see figures this severe. Hypernatraemic dehydration is usually seen in the context of end stage dementia when there has been an inability to drink enough over quite a long period of time. It is rare to see it in people who are cognitively normal."

The Committee also considered the wording of a newspaper report of the death of the complainant's mother. This article, from the *Shropshire Star*, was referenced both by the BBC and the complainant in their submissions to the Trust. The Committee noted that the newspaper article was headlined "Coroner rules widow died of natural causes" and had as its strapline, supplementing the main headline, "90-year-old patient was suffering from rare form of dehydration". The Committee noted that the article included the following:

"A 90-year-old ... widow who was admitted to hospital with a rare form of dehydration died from natural causes, a coroner ruled today..."

An inquest today was told that Mrs [XXX], who had arthritis and dementia, had been suffering from a rare form of dehydration which was masked by normal pulse and blood pressure...

[Name of consultant and his hospital] said he saw Mrs [XXX] the morning after her admission and saw she had a rare form of dehydration, one of the three worst cases he had seen..."

The Committee noted that all of these sources had used the word "rare" in relation to the dehydration. The Committee considered the ECU's argument at Stage 2 that the doctor's letter, above, was saying both that the extent of the dehydration was severe and that it was a rare form to see in a patient such as the complainant's mother.

The Committee appreciated the words "rare form" could be used to describe both and that it was significant that both the agency and the local newspaper had used the words "rare form" to describe what the consultant had said. The Committee agreed that, based on the evidence before it, this was not a rare type of dehydration but that it was rare for the dehydration to be so severe.

The Committee concluded that the wording used by the BBC, while not strictly accurate in that the type of dehydration was not rare according to the medical definition, was duly accurate according to the terms of the Editorial Guidelines, in that it had been adequate and appropriate to the output. The BBC had been entitled to rely on a reputable news agency report and there had been additional evidence from other sources, including the doctor's letter to the coroner's office.

Second element of the appeal

The Committee then turned to the complainant's second appeal point, which was that the admitting consultant at the hospital where her mother was taken was either misquoted or quoted out of context when he was reported by Radio Shropshire as having said "it was always going to be terminal, no matter what care she received".

The Committee examined the context of the phrase, which was:

Reporter: [XXX] was taken ill at the [YYY] care home in [location] last year. She had dementia, severe arthritis, a rare form of dehydration and a suspected urinary tract infection and pneumonia, and she died last January. The consultant who admitted her to hospital in [location] said it was only the third case like this he'd come across and it was always going to be terminal, no matter what care she received. She didn't want to go to hospital, her family asked for her to stay at the home, but [ZZZ], who was manager there at the time, says she got so ill they had to admit her.

The Committee noted the complainant's point that hypernatraemia was not necessarily fatal. The complainant queried whether the report had misquoted the doctor or should have made clear that the doctor was saying her mother was unlikely to survive no matter what care she received *by the time she arrived at the hospital*.

The Committee considered the relevant part of the original news agency copy that had formed the basis of the BBC's report in this respect. The news agency reporter had written:

"Admitting consultant [name of doctor] told the inquest Mrs [XXX] suffered from a rare form of dehydration.

He said: 'In my entire career I think this is the third seriously bad case of hypernatremic dehydration...

It comes on very very gradually, so the body compensates...

She was very ill when she was admitted, and this was always going to be a terminal event no matter what care she received..."

The Committee also considered a separate report in a local newspaper, and the letter from the doctor to the coroner's office, previously referred to, which stated the following:

"The metabolic abnormality was severe hypernatraemic dehydration of such a degree that we very rarely see figures this severe... My diagnosis on admission was severe hypernatraemic dehydration with a very poor prognosis... I would consider her admission metabolic disturbance to be incompatible with survival and her treatment was entirely appropriate ... but I'm afraid the outcome was pretty inevitable ... I have never seen anyone with this degree of metabolic upset survive."

The Committee's view was that there were sufficient grounds to suggest the doctor had not been misquoted: the BBC had been entitled to rely on a report from a reputable news agency and there was also separate, corroborating evidence.

The Committee then considered whether the report should have emphasised that the doctor was talking about the prognosis for the complainant's mother *by the time she arrived at the hospital*.

The Committee noted Radio Shropshire's view that listeners would have understood the context, and there was no implication that the admitting consultant – who was identified as such in the item – was talking about anything other than care from the point at which he admitted the patient to hospital.

Having listened to the broadcast, the Committee agreed that there was the possibility that some listeners might have interpreted the statement as referring to the prognosis prior to admission. However, the Committee did not agree that this was the necessary implication of the report. On balance, the Committee considered that, even without further clarification, the item had been duly accurate.

Looking at both elements of the complaint, the Committee agreed that this was a very sad case. It appreciated that the family continued to feel there were aspects of their mother's care they were unhappy about, even though the coroner at the inquest had not found fault with the care the deceased had received at the care home and at the hospital.

The Committee accepted that the complainant may not have got the outcome from the inquest that she had been hoping for, but it was satisfied that the Radio Shropshire reports of the proceedings had been duly accurate.

Finding: Not upheld.

Watson & Oliver, BBC Two, 7 March 2012, 7.30pm

1. The programme

Watson & Oliver features two comedians, Lorna Watson and Ingrid Oliver, who perform a live act including shows at the Edinburgh Fringe. This was their first series on television: a comedy sketch show featuring pre-recorded sketches mixed with comedy routines in front of a studio audience. Regular characters, such as the Georgian Ladies and Candy and April, the Playboy Bunnies, are featured. This complaint concerns the third episode.

2. The complaint

Stage 1

The complainant contacted BBC Audience Services on 7 March 2012 to complain about the "sexually explicit language and innuendo". He said that he was watching with his 5-year-old child and was appalled that terms such as "slutty, genital frenzy, here's my jugs etc..." were used. He specifically mentioned sketches featuring the Playboy bunnies and James Bond.

BBC Audience Services replied on 8 March 2012 explaining the policy regarding the 9pm watershed. This policy expects parents to share responsibility for assessing whether individual programmes should be seen by younger viewers, but does accept that before 9pm all programmes should be suitable for a general audience which includes children. They stated that the BBC has to cater for all viewers, though, and this includes showing a broad range of comedy which some may find distasteful.

The complainant replied stating that it appeared the BBC's reply was blaming him for "not vetting" the programme. He asked how he could assess the suitability of this programme if he had never seen it before.

The BBC's Head of Comedy explained that the series was commissioned for a pre-watershed slot, but had initially been broadcast at 10pm. However, the BBC did consider it suitable for the 7.30pm slot. He stated that, although Lorna Watson and Ingrid Oliver were not household names, they had performed together for some time, "winning particular acclaim for their shows at the Edinburgh Fringe". They had established a reputation for "unashamedly silly comedy which has broad appeal and which therefore sits well pre-watershed".

The Head of Comedy accepted that some of the sketches contained "a degree of innuendo" but felt they were "cheeky and mischievous rather than overtly sexual in tone". He quoted the *Daily Telegraph's* review "...it has a rare sense of comic mischief that teases but doesn't offend". Only one other complaint had been received, which he felt indicated that "the vast majority of viewers found it acceptable for the timeslot".

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) as he was dissatisfied with the responses to his complaint. He made the following comments:

The programme was not suitable for pre-watershed as it was "full of grossly offensive sexist remarks" which were unsuitable for young children.

How are parents meant to vet a programme if "we simply turn it on and have never seen it before"?

Having received only one other complaint does not mean the programme is not offensive.

The reference to the *Daily Telegraph* review is “not representative of the majority of middle and working class Britain”.

An ECU Complaints Director replied, stating that, although “some of the material in the programme was towards the edge of what might be expected in a pre-watershed slot”, it had not “actually crossed the boundary into what should only be transmitted after the watershed”. Clearly some of the comic focus was sexual, but it was not sexually explicit “more of the smutty, saucy seaside postcard variety”. Younger children would find it “a bit mystifying and not at all funny”.

The Complaints Director felt that this material fell into the category of what might be transmitted in the later watershed period. Although not suitable for the youngest children, it was not particularly explicit and was no worse “than the sort of smutty humour that older children might encounter at school”. He appreciated that it was not to every viewer’s taste, but did not feel that it was a serious breach of the Guidelines.

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

The complainant contacted the BBC Trust to appeal against the Stage 2 decision. He made the following points:

- The programme contained “grossly offensive sexist remarks” which were unsuitable for “young” children. This was “humour of a sexualised nature and type”.
- The ECU acknowledged that some of the material “was towards the edge of what might be expected in a pre-watershed slot” and agreed that “it would not be suitable for younger children”. The complainant said that the programme was initially broadcast after the 9pm watershed and should not have been screened in an “early pre-watershed slot”.
- The ECU did not take into account that “the average 4 or 5 year old” would still be watching television at this time of the evening. Parents were not warned about the content. How are parents expected to vet the programme?

The BBC Executive raised a concern that the appeal should not be considered on the grounds that the complainant did not contact the BBC Trust within the stipulated time as set out in the BBC’s Complaints Procedure:

Stage 3 – Requesting an appeal to the BBC Trust

5.1 If you are dissatisfied with the reply at Stage 2, you can request an appeal to the BBC Trust **within 20 working days** of the date on which you received the response at Stage 2. If you write after that time, please explain in your letter why your complaint is late. Exceptionally, the Trust may still decide to consider your complaint, if it decides there was a good reason for the delay...

5.8 The Trust is not obliged to consider every appeal brought to it, and is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not.

3. Applicable Editorial Guidelines

The Editorial Guidelines on Harm and Offence (Section 5) are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>.

The relevant Editorial Guidelines are:

Section 5 – Harm and Offence

Introduction

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

Creative risk-taking is a vital part of the BBC's mission. However, in all our output, the greater the risk, the greater the thought, care and planning required to bring creative content to fruition. We must be sensitive to, and keep in touch with, generally accepted standards as well as our audiences' expectations of our content, particularly in relation to the protection of children. Audience expectations of our content usually vary according to the service on which it appears.

When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted. Such challenging material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

Generally Accepted Standards

The Agreement accompanying the BBC Charter requires us to apply "generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material". The understanding of what constitutes 'generally accepted standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification.

Context

Context includes, but is not confined to:

- the surrounding editorial material
- the service on which the content is available
- the time at which it is available
- other programmes or content that are available around the programme or content concerned
- the likely size and composition of the potential audience and likely expectation of the audience

- the harm or offence likely to be caused by the inclusion of the particular content in output generally, or in output of a particular nature or description
- the extent to which the nature of the content can be brought to the attention of the potential audience, for example, by signposting and content information
- the effect of the content on audiences who may come across it unawares.

When making our judgements, these factors will not necessarily carry equal weight.

For new series on television and radio ... where content may raise issues of generally accepted standards, there should normally be a discussion early in the production process with the commissioning executive and the production team, including presenters and performers, to establish parameters of tone and content appropriate to the platform, context and slot.

Audience Expectations

5.4.1 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.

Television Scheduling and the Watershed

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

The 9pm television watershed is used by broadcasters to distinguish between programmes intended mainly for a general audience and those programmes intended for an adult audience. However, parents and carers share in the responsibility for assessing whether programme content is suitable for their children, based on their expectations of that content.

5.4.7 Programmes broadcast between 5.30am and 9pm must be suitable for a general audience including children. The earlier in the evening a programme is placed, the more suitable it should be for children to watch without an older person. Programmes in later pre-watershed slots may not be suitable for the youngest children or for children to watch without an older person.

4. The Committee's decision

The Committee considered the BBC Executive's concerns that the appeal should not be considered as the complainant had not contacted the BBC Trust within the stipulated time, as set out in the BBC's Complaints Procedures.

The Committee noted that the BBC Trust had received the complainant's appeal two weeks after the deadline set out in the Editorial Complaints Unit's finding. The Committee took into account that the correspondence between the complainant and the ECU had been conducted by post, and that the appeal to Trust had also been sent by post. The Committee concluded that it was reasonable to assume that some delay may have been due to the postal service and, therefore, decided to hear the appeal.

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

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

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. The Committee was asked to consider whether generally accepted standards had been met taking into account the subject and nature of the content, the likely audience expectation, the harm or offence likely to be caused by the inclusion of this particular material, and the extent to which the nature of the content can be brought to the attention of the potential audience. The Committee also noted that it was asked to consider whether the Guidelines concerning the television watershed were taken into account. This included taking into consideration the suitability of the content for a general audience, including children, and the time of the broadcast and whether it is regarded as a later pre-watershed slot where material may not be suitable for the youngest children.

Complaint Point - The programme included sexual content which was inappropriate at 7.30pm when young children are still watching television.

The Committee noted that the complainant raised issues about the suitability of three of the sketches in this episode.

The complainant believed that the innuendo in the first sketch was too sexually suggestive for this time of the evening.

This sketch is entitled *Absolutely No Sense and Sensibility* and features two Georgian ladies pursuing two gentlemen, Sir Thomas and Mr Bridgewater. These characters had been in previous episodes. During the sketch, the two ladies prepare a picnic for the gentlemen and are trying to tempt them to eat. It includes the following dialogue:

Oliver:	Now, might you be persuaded to a mouthful of my juicy apple dumplings? (Holds up plate, audience laughs)
Mr Bridgewater:	No, thank you.
Watson:	Sir Thomas, can I tempt you to a handful of my sweet macaroons? (holds up plate, audience laughs)
Sir Thomas:	No.
Oliver:	Surely you will not say no to a nibble on my almond puffs? (holds up plate, audience laughs)
Watson:	Roly polys, Sir Thomas? (holds up plate, audience laughs)
Oliver:	Fruit jellies? (holds up plate, audience laughs)
Watson:	Peachy fritters? (holds up plate, audience laughs)
Oliver:	Biscuits? (holds up plate, audience laughs)

Watson: Syllabubs? (holds up plate, audience laughs)

Oliver: French pancakes. (holds up plate, audience laughs)

Watson: Fried eggs? (holds up plate, audience laughs)

Oliver: Jugs. (holds up two glass jugs, audience laughs)

Watson: Melons? (holds up two melons, audience laughs)

Oliver: Tits on a plate?

Mr Bridgewater: I beg your pardon? (Oliver holds up a plate with two fake blue tits sitting on it, audience laughs) I just remembered me. We must away to London.

In the sketch, the two ladies are holding up the plates in a suggestive manner to draw attention to their breasts.

The Committee noted that the BBC provided the following statement:

"These characters appeared in episodes 1 and 2 so they were fairly well established (insofar as is possible for a new comedy series) by episode 3. The level of innuendo is probably greater, in terms of the number of such references, in the episode 3 sketch than in the first two episodes (having seen their advances towards the men fail in those episodes, the women are resorting to more desperate tactics by episode 3) however, the references themselves remain inexplicit.

Taking, for example, the two phrases... – 'tits on a plate' and 'jugs'; Ofcom's 2010 research, 'Audience attitudes towards offensive language on television and radio', categorised the word 'tits' as being of 'higher acceptability' and therefore 'generally acceptable' pre-watershed:

'The word[s]... "tits" were ... considered acceptable because they were thought to be used frequently in everyday language and are not usually used in a context which is likely to cause offence. As these words are already part of common vocabulary, most were not concerned about hearing these words on television. Also, the word[s] ..."tits" were ... thought to be harmless, casual ways of referring to specific body parts....These words were considered acceptable pre-watershed across the sample.'

On the more general point; this sort of cheeky innuendo ... is a legitimate and established strand of British humour embodied, perhaps, by the Carry On films, which have been broadcast pre-watershed for decades.

Furthermore, a 2009 report for Ofcom, titled 'Attitudes towards sexual material on television', poses the question "How strong are different types of sexual material considered to be?", the response to which is:

'Sexual content such as kissing and innuendo was deemed to be very mild by most participants, and still fairly mild even when accompanied by evident sexual overtones.'

<http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/sextv.pdf>

The Committee noted that the complainant felt the second sketch was too sexually explicit in its language and tone.

This is entitled *Living with the Playboy Bunnies* in which the two comedians appear dressed in the Playboy bunny outfits. They explain that they are Hugh Hefner's new girlfriends and are at his mansion to have an Easter Party. The sketch includes the following dialogue:

Watson/April: (slides backwards down banister) Yaaaaay! Look at my butt cheeks! They're so round and firm!

Later on the two playboy bunnies explain that they are going on an Easter Egg hunt with Heffner and what they think of him:

Oliver/Candy: ...He really turns me on.

Watson/April: Yeah. He's so hot. (Audience laughs)

Oliver/Candy: Yeah. Heff's really hot.

Watson/April: Yeah. He's such a hottie. (Young man walks past, both girls distracted)

Oliver/Candy: Yeah ... he's super hot...

By this time the audience has seen a picture of an old man making a gurning face and when he calls to them off camera to join him, the two playboy bunnies argue about whose turn it is:

Oliver/Candy: Well, I did Sexy Saturday, so...

Watson/April: I did Slutty Sunday so... (audience laughs)

Oliver/Candy: I did Missionary Monday.

Watson/April: I did Tantric Tuesday.

Oliver/Candy: I did Whipped Cream Wednesday.

Watson/April: I did Threesome Thursday! On my own! (Audience laughs)

Oliver/Candy: Well, I'm not doing it. You still owe me for Viagra Valentines.

The Committee noted that the BBC provided the following comments on this sketch:

"This strand of sketches is an exaggerated parody of the American television series *Girls of the Playboy Mansion*. The characters appeared in episode 1 and are also the first characters to appear in the opening title sequence for each episode.

The Bunnies themselves are caricatured stereotypes. As with most of *Watson & Oliver's* sketches, it is their ineptness, their complete inability to be alluring and, more specifically, their revulsion at the Heff character that is the focus of their comedy. The inclusion of some very broad, physical, slapstick comedy also serves to diffuse any air of sexuality.

The language used was mostly of the double entendre type and none of it explicit. It is also worth noting that Ofcom's guidance for the Protection of the under Eighteens states that, 'milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context'."

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

The Committee noted that, in the third sketch, the complainant was concerned about explicit sexual language and imagery including props that, he considered, were used as phallic symbols. This sketch features a pastiche of the James Bond films and is in two parts. In the first part, Lorna Watson has received a letter informing her that she is being considered for the part of a Bond Girl. She comments:

Watson: Well, I presume they're looking for someone with the face of a supermodel and a body that screams "Hello, I'm sexually dangerous". (Audience laughs)

Ingrid Oliver then asks her the name of the part, she replies:

Watson: Jenny Talfrenzy.

Oliver: Jenny Talfrenzy? Jenny Tal-, genital frenzy? (Audience laughs)

Watson: I presume she's Italian.

In the second part of the sketch, the comedians are recreating a Bond opening sequence. As part of this, Ingrid Oliver poses with a gun and motions for Lorna Watson to come forward. Watson dances forward awkwardly and kisses the gun. The BBC provided the following comments:

"The James Bond theme is a recurring one during episode 3. The first sketch revolves around the premise that Lorna Watson is being considered for the role of the new Bond girl. Bond films have regularly been shown pre-watershed throughout the years so Bond, and Bond girls, are concepts with which people of varying ages will be familiar. Older viewers will also be familiar with the tradition of Bond girls being rather suggestively named e.g. Honey Ryder, Kissy Suzuki, Plenty O'Toole, Holly Goodhead, Xenia Onatopp and, of course, Pussy Galore. The name of the character Lorna is supposedly up for, Jenny Tal Frenzie, is almost plausible and certainly no more explicit than some of the names mentioned above. We realise, of course, that Ingrid Oliver restates the character name as 'Genital Frenzy' but any sexual subtext is immediately diffused by Lorna, who innocently jumps in with 'I presume she's Italian'.

The episode culminates with a pastiche of the opening sequence of a James Bond film – another concept with which a broad audience will be familiar. ...Lorna Watson (in the role of the Bond girl) does kiss the barrel of the gun which is being held by Ingrid. This is more suggestive but the kisses are short and repeated and are accompanied by a comedic kissing sound effect. Ingrid also clearly gestures to Lorna to stop. The effect of all this is to completely desexualise the act. In fact Lorna's entire performance is that of a rather inept and unsexy Bond girl."

The Committee also noted the BBC's response about the suitability of the scheduling of this programme in a pre-watershed slot, in which they stated:

"The programme was commissioned for pre-watershed so the same version played out post- and pre-watershed.

However, it was not made with an audience as young as (the complainant's) child in mind and was therefore not placed at a time or in the running order of programmes intended to attract this age of viewer.

The programmes scheduled before *Watson & Oliver - Escape to the Country* and before that *My Life in Books* - have an overwhelmingly adult appeal. In fact, research shows that just 30,000 4-15 year-olds watched *Escape to the Country* and that this dropped to 26,000 for *Watson & Oliver*.

Indeed, none of the programmes preceding *Watson & Oliver* in the afternoon or following it in the evening would have had any particular attraction to a younger audience and programmes appealing to children are not usually placed in this 19:30 slot on BBC Two."

The Committee noted that the ECU had agreed that "some of the material in the programme was towards the edge of what might be expected in a pre-watershed slot", but did not think that "it actually crossed the boundary into what should only be transmitted after the watershed".

The Committee noted that, of 26,000 children viewing this programme, the BARB figures showed that this fell to 9,800 for those aged 6-9 years.

The Committee noted that this was a new series featuring two comedians in their first show together for BBC Two. This was the third episode and the Playboy bunny and Georgian lady characters had been featured in previous episodes. The Committee took into account the fact that audience research (*Taste, Standards and the BBC: Public attitudes to morality, values and behaviour in UK broadcasting – June 2009*) drew programme-makers' attention to the need for care when dealing with new series:

"For new series where questions of taste and standards are likely to arise, there must be a discussion with the commissioning executive early in the production cycle to agree appropriate parameters of tone and content, to ensure that all involved – including presenters and performers – have given thought to questions of channel, context and slot."

In the Key Findings of this report, different programme genres were considered including comedy. The Finding concluded that:

"This is such a wide-reaching genre, from mainstream family comedy, to edgy, niche comedy, that it is difficult to make generalisations about the audience's expectations of content. Furthermore, opinions of 'offensiveness' in this area are often very subjective and a matter of personal taste, more than for other types of programmes, and most say comedy comes with 'it's own licence'. However, in the qualitative research there were some common themes that emerged:

- ...
- Less well established comedians or new series on mainstream channels are felt to have to earn the right to push the boundaries of tastes and standards, through gaining the audience's trust.
- ..."

This concern about new series was subsequently reflected in the BBC's revised Editorial Guidelines.

For new series on television and radio (or when existing series change channels) where content may raise issues of generally accepted standards, there should normally be a discussion early in the production process with the commissioning executive and the production team, including presenters and performers, to establish parameters of tone and content appropriate to the platform, context and slot.

(<http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-harm-introduction/>)

The Committee noted that the series had received 23 complaints in total. For this episode, two people complained about the sexual content at 7.30pm. There were a further six complaints about other episodes, all referring to the Playboy bunny sketch, where viewers found the humour too "sexual".

The Committee appreciated that the BBC had a long record of using cheeky sexual innuendos with humour and without causing offence in TV and radio comedy. Indeed, many of the BBC's traditional comedy classics relied on it. The Committee concluded that the sketches would be unlikely to offend an adult audience.

The Committee also agreed that the sketches featuring the two Georgian ladies would be unlikely to cause concerns with regard to protecting children.

However, the Committee agreed with the complainant that some parts of the other two sketches were questionable for this time of the evening before the watershed in terms of protecting children. In particular, the Committee was concerned with the overall tone of the Playboy bunny sketch which contained sexual jokes and gestures. The Committee also felt that in the James Bond sketch it was debatable if it was appropriate to clearly articulate "genital frenzy" when referring to the Bond girl's name as "Jenny Talfrenzy".

The Committee was mindful that, for well-established series at 7.30pm, parents and carers would be able to make a judgement as what was suitable for their children to view. In this case, with a new series, parents could not reasonably be expected to have prior knowledge of the content. The Committee agreed that, in these circumstances, programme-makers should bear in mind that at this time of the evening some younger children may still be watching television. For this reason, the Committee believed that some of the content of this programme was at the margins of acceptability for this time of the evening. The Committee considered that even a slightly later slot of 8pm would have reduced the likelihood of those under 7 years of age watching it.

However, the Committee took into consideration that by 7.30 in the evening there is an increasingly adult audience watching television and the audience of younger children is declining. The Committee accepted that this comedy show would be unlikely to appeal to young children and that, in general, the schedule for BBC Two was not aimed at them.

The Committee concluded that overall the comic innuendos (which would be beyond the comprehension of the youngest children) did not breach generally accepted standards or the guidelines regarding scheduling and the watershed which are there to protect younger viewers.

The Committee concluded that this programme was not in breach of the BBC's Editorial Guidelines. However, the Committee expected the BBC to take note of its comments

particularly in relation to the scheduling of comedy content with sexual references at 7.30pm when some young children might be among the audience.

Finding: Not upheld.

Rejected Appeals

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

5 live Investigates: Cyber Stalking, BBC Radio 5 live and Podcast, 1 May 2011; and Cyber-stalking laws: police review urged, BBC Online, 1 May 2011

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

Appeal to the BBC Trust

The complainant appealed to the Trust on 25 September 2012 regarding an online article and a BBC Radio 5 Live programme and podcast which made reference to the complainant's conviction for harassment. The complainant took issue with a quotation in the items from the target of the complainant's harassment. The target is quoted in the sidebar to the online article as saying that "Being ... blackmailed by a stranger for four years is psychologically very draining". The complainant stated that he was not convicted for blackmail (although he was convicted for harassment) and that the article is defamatory.

The complainant provided confidential police notes which, he contended, proved that there was no case for blackmail. The complainant noted that the BBC had removed from the podcast an inaccurate statement that he had been jailed for malicious communication in addition to harassment. In the complainant's view, the online article and podcast were mendacious hearsay. He said that no BBC reporter had been present in court and that none of the allegations against him in the online article and podcast had been proven. He explained the reasons why he considered his trial to have been "fixed".

The complainant said that he had complained about this matter to Ofcom. He stated that Ofcom had upheld his complaint that the BBC had invaded his privacy and breached his right of reply under Article 19 of the Human Rights Act 1998. According to the complainant, Ofcom was unable to pursue his complaint due to BBC restrictions on bringing a complaint more than 31 days after a publication or broadcast.

The complainant supplied HTML links to a number of webpages, which he stated had reproduced the online article and/or podcast. In his view, these served to show that the matter had gone beyond libel.

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

The Senior Editorial Strategy Adviser considered the appeal request against the Editorial Guidelines on Accuracy, Impartiality, Fairness and Privacy. She explained her reasoning on each of these in turn.

Accuracy regarding "Blackmail"

The Senior Editorial Strategy Adviser noted that the full quotation in the sidebar of the online article read:

"[The target of harassment] said: 'Being stalked, harassed and blackmailed by a stranger for four years is psychologically very draining.'"

This comment was a direct quotation from the victim of the crime and described the effects upon him. The target clearly felt that he was being blackmailed. Taken in context, the Senior Editorial Strategy Adviser considered that readers of the online article would have understood that this was an emotional reaction from the victim and was his honestly held belief. The online report did not suggest that the complainant was charged with, or convicted of, blackmail.

The Senior Editorial Strategy Adviser therefore decided that this point of the appeal did not have a reasonable prospect of success and should not proceed to the ESC.

Accuracy regarding 'Malicious communication'

The Senior Editorial Strategy Adviser noted that, in its original version, the podcast had incorrectly stated that the complainant was jailed for malicious communication, in addition to harassment. BBC Audience Services had conveyed to the complainant the programme makers' apology for this accidental error and informed him that the podcast had been corrected. The error was clearly a breach of the Accuracy Guidelines. However, as the programme makers had apologised and taken appropriate remedial action, the Trust would generally consider the matter resolved.

The Senior Editorial Strategy Adviser therefore decided that this point of the appeal did not have a reasonable prospect of success and should not proceed to the ESC.

Impartiality

The Senior Editorial Strategy Adviser noted that the complainant clearly felt there had been a lack of balance in the BBC's reporting and that he felt his point of view should have been put forward.

The Senior Editorial Strategy Adviser noted that the introduction to the Editorial Guidelines on Impartiality states that the BBC applies "due impartiality" to all subjects, but that the requirements of due impartiality vary:

The term 'due' means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

The Senior Editorial Strategy Adviser considered that, when discussing the effects of a crime on its victim, due impartiality did not require a balancing perspective from the person convicted of the crime.

The Senior Editorial Strategy Adviser therefore decided that this point of the appeal did not have a reasonable prospect of success and should not proceed to the ESC.

Fairness, Contributors and Consent: Right of reply

The Senior Editorial Strategy Adviser said that the presumption of a right of reply in the Editorial Guideline applied to “**allegations** of wrongdoing, iniquity or incompetence” and “strong and damaging **critique[s]**” (emphases added), not to the factual reporting of a criminal conviction and the effects of the crime on its victim, as contained in the online article and podcast. The BBC was not therefore required by the Editorial Guidelines to afford a right of reply. Although the complainant now denied that he committed the offence of harassment, the fact was that he pleaded guilty to and was convicted of that offence. Unless and until the conviction was quashed by the courts, the BBC was entitled to report upon – and the victim to reflect upon – that conviction as a given fact.

In his appeal to the Trust, the complainant stated that Ofcom had found that the BBC had breached Article 19 of the Human Rights Act – The Right of Reply. The Senior Editorial Strategy Adviser could not agree that this précis accurately described Ofcom’s decision for the following reasons:

- Ofcom did not make any finding on whether the complainant had a right of reply, or on whether the BBC had breached any such right.
- Ofcom did not make any mention of the Human Rights Act or of any right of reply thereunder.
- The Human Rights Act contained no Article 19. The Universal Declaration of Human Rights, which did contain an Article 19, stated:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

- Article 19 of the Universal Declaration of Human Rights did not expressly mention any right of reply.

For these reasons, the Senior Editorial Strategy Adviser decided that this point of the appeal did not have a reasonable prospect of success and should not proceed to the ESC.

Privacy

With regard to the complainant’s claim that the BBC had breached his right to privacy, the Senior Editorial Strategy Adviser noted that the fact of his conviction was a matter of public record. No question of any breach of privacy therefore arose.

In his appeal to the BBC Trust the complainant stated that Ofcom had upheld his privacy complaint, but this was incorrect. Ofcom took the view that the complaint raised a potential issue of unfair treatment rather than unwarranted infringement of privacy. That did not mean that Ofcom felt the complaint was valid, because, as noted below, it did not reach a decision about the complaint.

The Senior Editorial Strategy Adviser therefore decided that this point of the appeal did not have a reasonable prospect of success and should not proceed to the ESC.

Ofcom decision: Delay in bringing complaint

In his appeal to the BBC Trust, the complainant stated that Ofcom was unable to pursue his complaint because of the BBC's 31 day limit on complaints. This again was incorrect. In reaching its decision, Ofcom considered the timing of the complaint under its own Fairness and Privacy Procedures, not the BBC's Editorial Complaints and Appeals Procedures:

"Ofcom notes that [the complainant] submitted his complaint on 25 January 2012, which was 186 working days after the programme was broadcast (i.e. 1 May 2011). The complaint was therefore submitted 166 working days after the normal period (i.e. 20 working days) set out by Paragraph 1.10 of Ofcom's Fairness and Privacy Procedures."

The Ofcom decision went on to state:

"When considering the length of the delay (in this case 166 working days), Ofcom has regard not only to its own procedures, but also to the relevant statutory provisions concerning the broadcaster's duty to retain recordings of programmes (for 90 days in the case of the BBC), and whether the complainant initially complained to the broadcaster.

Ofcom notes that [the complainant] submitted his complaint 186 working days after the programme was broadcast and 166 days after the normal period for submitting a complaint."

The Senior Editorial Strategy Adviser said that, contrary to the complainant's assertion that Ofcom was unable to pursue the complaint due to the BBC's restrictions, Ofcom decided not to entertain the complaint because:

- it was likely that the programme makers would not be able to respond fully
- there was therefore a risk of undue prejudice to the BBC if Ofcom were to investigate the complaint
- Ofcom's ability to adjudicate fairly on the complaint would be compromised.

The complainant requested that the Committee review the decision not to proceed with the appeal. He reiterated his view that the online article was false and without foundation. He also alleged that an agreement had been breached and that this breach had been facilitated by the BBC as a result of their publication of the article. He maintained that, by leaving the story online, the BBC is being vexatious, malicious and vindictive.

The complainant stated that he did not stalk or blackmail the individual who brought the court case against him.

The complainant also said that he was pursuing an appeal to overturn his conviction and alleged that his trial had been "fixed". He alleged that the IPCC had ordered the Metropolitan Police to conduct an investigation into allegations of wrongdoing at his trial in 2011. He made reference to the findings of an interim report which he stated had been produced by the Metropolitan Police.

The complainant concluded by stating that, by publishing the article, the BBC had destroyed the complainant's reputation and career. The complainant threatened that, unless the article and podcast were removed from the public domain by the end of November, he would bring a civil court action against the BBC and Radio 5 Live presenters.

The Committee's decision

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

The Committee noted the complainant's view that the online article, original 5 Live programme and associated podcast had been inaccurate and unfair to him. The Committee noted that this output had made reference to the fact that the complainant had been convicted and imprisoned for harassment. The Committee noted that at the time, the complainant had pleaded guilty to the charge, although he now said he intended to challenge his conviction.

The Committee was satisfied that the BBC's references to the complainant's crime were appropriate as he had been convicted in a court of law and this conviction had not been overturned at the date the Committee considered the matter. The Committee considered that any issue that the complainant had with the validity of this conviction was a matter for the relevant authorities and not the BBC. The Committee agreed that the right of reply stipulated in the Guidelines should be assessed on a case by case basis but, in the Committee's view, it did not in general extend to those who have been convicted of a crime being given the opportunity to respond to comments from the victims about the effect those crimes have had on them.

The Committee noted that the podcast had originally contained an error, which had been corrected and an apology given, and the Committee was satisfied that this issue had been resolved and there would be nothing further to be gained from an appeal to the Trust on this point.

The Committee noted the complainant's references to the Ofcom finding. It noted that the complainant's description of what Ofcom had said differed from what was suggested by the facts as set out by the Trust's Senior Editorial Strategy Adviser⁴. The Committee was satisfied that there was nothing arising from Ofcom's engagement with the complainant to support the complainant's allegation that the Editorial Guidelines had been breached.

With regard to Privacy, the Committee agreed that the complainant's conviction was a matter of public record and no question of any breach of privacy arose.

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

⁴ After the Committee's decision had been shared with the complainant, he clarified that he had meant to refer to Article 10 of the Human Rights act in reference to the right of reply. This clarification was put to the Committee at its meeting on 7 February 2013. The Committee confirmed that its decision regarding the complainant's right of reply was unaffected by the new information and the published finding has been amended to include this footnote.

Olympics 2012, BBC One, 29 July 2012

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

Appeal to the BBC Trust

The complainant made the following points in his appeal to the Trust:

- Gary Lineker's remark "And just to cheer you a little, you might like to know that the Germans are still waiting for their first (medal)" was unacceptable as it brought "jingoistic" football banter into another sphere of sport.
- "Widespread offence" was caused and the BBC received at least 150 complaints.
- There did not appear to be a "clear and demonstrable editorial purpose" to comments about Germany's lack of medals.
- The Editorial Complaints Unit (at Stage 2 of the BBC's complaints process) concluded that this remark was "playful banter". However, in the complainant's view it was mocking a group, which made it unacceptable.
- Gary Lineker should not bring "his footballing past and obvious resentment towards the Germans into this realm".
- "The Olympics was about 'Team GB' and not 'England'. The BBC response was offensive as it assumed all viewers are English, when the other countries that constitute Great Britain do not have a sporting rivalry with Germany.

The Trust Unit's decision

The Trust Unit's Senior Editorial Strategy Adviser replied to the complainant explaining that she had reviewed the relevant section of the programme and the correspondence and she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Senior Editorial Strategy Adviser said that the applicable Editorial Guidelines were those dealing with Harm and Offence, and particularly the requirement for meeting generally accepted standards.

The Senior Editorial Strategy Adviser explained that these Guidelines mean that programme makers must be mindful of the expectations of their audience and of the context around any comments that might cause offence. However, she said it is not the case that any offence felt by viewers automatically means the Guidelines have been breached – people's opinions about what is offensive are so varied it would be impossible never to cause offence. The Guidelines require programme makers to use their judgement when deciding whether output is in line with generally accepted standards. She explained that programme makers should keep abreast of shifts in public opinion by using relevant research and ensure that comments which might be offensive are editorially justified.

Listening to the relevant part of the coverage, the Senior Editorial Strategy Adviser noted

the context in which Mr Lineker's comments were made. Rebecca Adlington had just won bronze in the women's 400m freestyle swimming event. Although that was recognised as being a tremendous achievement, there had been hopes that she might win a gold medal as she had done in the Beijing Olympics of 2008. In the studio, Mr Lineker had been joined by the Australian five times Olympic gold medal winning swimmer Ian Thorpe, who was discussing how Australia had also not performed as well as many had anticipated.

In that context, Mr Lineker said: "We've seen Beccy Adlington win Britain's second medal of the day and just to cheer you a little you might like to know the Germans are still waiting for their first."

The Senior Editorial Strategy Adviser considered therefore that the comments not only reflected Mr Lineker's feelings of a long-standing sporting rivalry with Germany but were also influenced by a sense that viewers might feel disappointed with the medals that had been won, and he was attempting to mitigate that disappointment. The Senior Editorial Strategy Adviser noted that the BBC made the following statement on its website in response to complaints about them:

"Gary Lineker was presenting live from the Olympic Stadium on a busy night of sport. This was a light-hearted remark about the sporting rivalry with Germany and was clearly in that context."

The Senior Editorial Strategy Adviser concluded that there was an editorial justification to the comments and she did not believe that the appeal had a reasonable prospect of success on this point.

In terms of the offence caused by the comment, the Senior Editorial Strategy Adviser noted that the ECU Complaints Manager referred to Ofcom research that suggested remarks made in 'playful banter' were less likely to cause widespread offence. She noted that the Complaints Manager wrote:

"I believe Gary Lineker's comment fell firmly into the category of the 'playful banter' ... I don't believe that it had the potential to cause widespread offence or that it was used with malice or with the intention of denigrating the German Olympic team. I also feel that Gary Lineker is sufficiently well-known to the wider audience for them to have understood the reference to have its roots in his own sporting background, and that the remark was a tongue-in-cheek one."

The Senior Editorial Strategy Adviser explained that, although the BBC received in the region of 150 complaints about this comment, this does not necessarily mean that it caused "widespread offence". Other factors to be taken into account, audience research and the report quoted by the ECU, suggested that viewers consider the style of delivery and familiarity with the presenter when judging the likelihood of offence. The Senior Editorial Strategy Adviser said that, while the remark might not be to every viewer's taste, this is not the same as causing serious and widespread offence.

The Senior Editorial Strategy Adviser said that it is a matter of individual interpretation whether viewers understood Gary Lineker's remark to be "playful banter" or "mocking" in its delivery. It seemed to her that the remark was made in a friendly manner without any aggression – and went no further than stating that Germany had not yet won an Olympic medal. While some viewers did not feel this remark was in keeping with the Olympic spirit, rivalry has always existed in sport, whether in individual events or comparing positions in the medal table. The Senior Editorial Strategy Adviser did not, therefore, consider that the appeal had a reasonable prospect of success on this point.

The Senior Editorial Strategy Adviser noted the complainant's suggestion that the comment was offensive as it assumed everyone watching was English. However, she considered that most viewers would be familiar with Mr Lineker's footballing background and did not believe that the majority of viewers would have been surprised by his reference to the German team, whether from England or any other nation, given his career history. As the Senior Editorial Strategy Adviser considered that most listeners would have understood it to be a light hearted comment, she did not believe that the complaint had a reasonable prospect of success on this point.

The Senior Editorial Strategy Adviser concluded that the Editorial Complaints Unit had dealt satisfactorily with the complaint in terms of the Guidelines and there would be no reasonable prospect of success in putting this appeal before the Editorial Standards Committee.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He repeated that he and many of his friends were offended by the comment, and that he found it unacceptable. The complainant said that, rather than being delivered with a smile, in his view the comment was delivered with "a smirk or wry grin". The complainant questioned whether Mr Lineker's past footballing history and rivalry with Germany made the comment acceptable. The complainant said that the comment was unprofessional and biased.

The Committee's decision

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

The Committee noted that the complainant said he, and many others, were offended by the comment. The Committee considered that it was evident from watching the clip that the comment was intended as a light-hearted joke and was not a serious expression of bias against Germany. The Committee agreed that the joke was perhaps more suited to a football context; however, this was not a standards issue which engaged the Editorial Guidelines.

The Committee noted the responses to the complaint which had been given by the BBC, both in its published statement and its replies to the complainant. The Committee agreed that the BBC had demonstrated the editorial justification for the comment. The Committee was satisfied that the complaint had been dealt with appropriately and there was no reasonable prospect of success for an appeal against the decision of the Editorial Complaints Unit.

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

Today, BBC Radio 4, 29 May 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance & Accountability, BBC News, not to uphold his complaint. The complainant said that the *Today* programme, culminating in the broadcast of 29 May 2012, was complicit in what he described as the UK Government's "hiding of the EU origins of the 'Pasty Tax'" and the Government's subsequent claim that it listened to criticism and executed a "climb down", when the complainant said it was no such thing.

The complainant said that the reason why VAT was to be imposed on food like pasties was due to a need in Britain to comply with tax directives laid down by the European Union, which were not being applied consistently. The complainant felt it was important that that point should have been made by the *Today* programme in its report. The complainant said that the programme should have questioned the Government's explanation for its change of policy.

The complainant referred to a letter he had received at the second stage of the complaint process from the Head of Editorial Compliance & Accountability, BBC News. He said that she had concentrated only on the *Today* programme of 29 May 2012; however, his complaint was broader than that single edition. He said that, contrary to the views expressed by the Head of Editorial Compliance & Accountability: "the government likes to make a point of publicly putting up a fight against proposed EU law ... but it remains very quiet about existing EU law. This is because ... our government is powerless to amend a single line of existing EU law, and it knows it."

The complainant concluded: "The UK Government cannot change any existing EU law without the agreement of the majority of EU members (which isn't going to happen). So it plays down the EU origins of unpopular UK law whenever it can... If this is not countered with well researched accuracy then the BBC will be continuing to show political bias, by accident if not by design."

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser replied to the complainant explaining that she had reviewed the correspondence and listened to the relevant sections of the programme and did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Senior Editorial Strategy Adviser noted that the complainant had referred to coverage of the "pasty tax" issue on Radio 4's *Today* programme, "culminating" in the edition of 29 May; however, the complainant had not specified which other editions of the programme failed, in his view, to cover the story accurately or impartially. The Senior Editorial Strategy Adviser said that, therefore, she was only able to consider the complaint as far as it related to the edition of *Today* broadcast on 29 May 2012.

The Senior Editorial Strategy Adviser noted that the appeal raised issues relating to the Guidelines on Accuracy and Impartiality. She explained that these Guidelines mean that

programme makers must ensure their output is both duly impartial and duly accurate – however, it does not require them to cover every aspect of a story each time that subject is aired and it gives them considerable freedom to concentrate on a particular aspect of a story if there is an editorial justification for it.

On this occasion, the *Today* programme's coverage of the "pasty tax" story concentrated on the domestic political agenda rather than the origins of ad-valorem taxation. The Senior Editorial Strategy Adviser noted that this was set out in a letter to the complainant from the BBC at Stage 1 which stated:

"The story in our news bulletin on the government's decision to scrap the 'pasty tax' was essentially a political one. We were reporting what some critics saw as an embarrassing climbdown on a key proposal made in the Budget. We take the view that the background detail about EU VAT legislation did not belong in such a brief account... The decisions taken by our news journalists are based entirely on news values."

The Senior Editorial Strategy Adviser noted that the Head of Editorial Compliance & Accountability, BBC News, wrote to the complainant at Stage 2, adding:

"[The] 'Today' [programme]'s report focused on the domestic political implications of this policy U-turn ... it cannot feasibly give background to every item..."

"There isn't the space or editorial need to go into background every time VAT is in the headlines – especially when (and I can only agree with the Today programme editors in this regard) this was clearly a UK political story."

The Senior Editorial Strategy Adviser agreed with that analysis and noted that the reporting on the *Today* programme was not out of line with the rest of the media. This change in policy came after the Government had been accused of presiding over an "omnishambles" in which several areas of tax reform that had been outlined in the Budget had been changed. The Government had already dropped its plans to charge VAT on static caravans and on charitable donations. The "pasty tax" was the most recent policy that had been rewritten.

The Senior Editorial Strategy Adviser noted that the BBC's political editor gave his own analysis of the policy change on the programme. His judgement was that the change in policy had been a matter of domestic political expediency. He suggested it was designed to both limit the extent to which the opposition could make political capital out of the move, and lower the possibility of future splits in the coalition on the issue. He said:

"This coalition still seems pretty united around its deficit reduction plan, it is round the margins that things came undone..."

"...the smallest majority that this coalition has had was on a rebellion over the caravan tax and Labour had cunningly planned another vote on the same topic for when MPs returned after the Jubilee holiday – and therefore I think the government thought it would be a good idea to do their U-turn now, in anticipation of that, and of course when MPs themselves are on holiday and therefore when Ed Miliband cannot have enormous fun at the Prime Minister's expense and Ed Balls at George Osborne's expense."

The Senior Editorial Strategy Adviser noted that the Head of Editorial Compliance & Accountability stated that both the BBC's analysis and research department, and the BBC

bureau in Brussels had disagreed with the complainant's suggestion that the EU VAT directive had had a major part to play in the "pasty tax" story in the UK. The Head of Editorial Compliance & Accountability wrote:

"We agree that it might well have been interesting to have given the EU VAT context, even though, in my view, its omission did not have a bearing on our impartial reporting of it.

"To sum up, we disagree that this angle of the pasty tax story was central to coverage. BBC news programmes are not journals of record and cannot feasibly cover every aspect of every long-running story – particularly if it is not raised in any public forum by those leading the various arguments for and against a proposal."

The Senior Editorial Strategy Adviser said that she had not seen any evidence that suggested that omitting the background to VAT amounted to political bias. She noted that in his previous correspondence the complainant had raised the issue of general bias at Stage 1. The BBC addressed that in their letter at Stage 1 in which they wrote:

"The *Today* programme, and other BBC outlets, regularly report on EU matters and there is a large amount of background information on the BBC website. You say the BBC never challenges the 'pro-EU consensus'. In fact we regularly report a range of views, some of them critical."

The Senior Editorial Strategy Adviser said that she appreciated the complainant believed that this edition of *Today* should have reflected the history of VAT and the EU tax directives, and this was a matter about which he felt strongly. However, she considered that the continuing, domestic political fall-out from the change in policy was a legitimate and topical editorial focus to pursue. She had not seen any evidence that suggested the coverage was inaccurate or that a failure to include the history of EU tax directives meant it was in breach of the Guidelines on Impartiality. The Senior Editorial Strategy Adviser said that the complainant had not raised any complaints about other specific broadcasts and she explained that any other issues he wished to raise should be directed through the BBC's complaints service in the first instance.

The Senior Editorial Strategy Adviser concluded that the complaint did not have a reasonable prospect of success on appeal and she did not propose to put it before Trustees.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the main thrust of the replies he had received was that this was a domestic political issue. The complainant said that this was a superficial interpretation and was wrong. The complainant repeated his view that the Government wanted this to be seen as a domestic issue and that the *Today* programme should have told "the whole story". The complainant explained his view of how EU VAT directives affected the "pasty tax". The complainant repeated his allegation that the *Today* programme "accepts a pro-EU consensus by default", and cited a later interview with Ken Clarke in the same edition in support of this point.

The Committee's decision

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

Committee to review her decision. The Committee was also provided with the relevant clips from the programme.

The Committee was satisfied with the BBC's explanation for not giving the type of analysis in its reports of 29 May that the complainant felt should have been included. The Committee did not agree that, given the news agenda of the day and the limited time available in the *Today* news bulletins, there was a reasonable case that the omission of this particular viewpoint could have constituted a breach of the Guidelines on Accuracy or Impartiality. The Committee was satisfied that it was reasonable for the *Today* programme to have covered the "pasty tax" story in the way it had, and there was no evidence to support the allegation that the editorial judgment had been affected by bias. The Committee noted the BBC's point that the *Today* programme, and other BBC outlets, regularly report on EU matters and there is a large amount of background information on the BBC website.

The Committee also noted that the complainant, in his response to the Senior Editorial Strategy Adviser's decision, had made a point relating to an interview with Ken Clarke in the same edition of the *Today* programme; however, this was a new complaint which had not been raised previously with the BBC and was therefore not eligible for consideration by the Trust on appeal.

The Committee was satisfied that the complaint had been dealt with appropriately and there was no reasonable prospect of success for an appeal against the decision of the Head of Editorial Compliance & Accountability for BBC News.

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

Bang Goes the Theory, BBC One, 16 April 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding the accuracy and impartiality of an episode of *Bang Goes the Theory* which examined the science of wireless connectivity.

The complainant said that, in his view:

- there was an overall bias in the tone of the programme and that since the early 1970s there had been hundreds of studies showing ill health from low-level electromagnetic radiation (EMR).
- the programme relied almost totally on "one-sided" interviews. The complainant said that the programme limited its choice to a psychologist and a dosimetrist, "both of whom are still trying to deny any serious adverse effects from EMFs and EMR". He stated that in 2008 the scientific press reported that the majority of involved scientists accept that there are adverse health effects from low-level non-thermal EMR. The complainant said that the BBC was promoting an outdated view by going against majority scientific opinion.
- the ECU had failed to address a list of twelve detailed complaints which he had submitted. In that list he noted the occasions when other parliaments and international bodies differed in their analysis of the possible dangers of electromagnetic radiation and the limits they had placed on Wi-Fi use. The complainant said that these international differences were not reflected in the programme. The complainant also said that doctors outside Britain had used different methods to diagnose Electro-Magnetic Hypersensitivity (EHS) and accepted its existence, but these doctors and their opinions were not reflected in the programme. The complainant said that some scientists felt the mobile phone and Wi-Fi industry was distorting evidence, but this was not reflected in the programme. The complainant also said that the programme did not mention or give examples of people whose lives had been affected by Electro-Magnetic Hypersensitivity (EHS) or by radio frequency Electro-Magnetic Fields (RF EMFs).

The complainant concluded that the programme was "seriously flawed from a medical and scientific point of view". He said this was especially the case in not specifically warning that some members of the general population do suffer adverse physical effects from EMF and EMR and that the majority of involved scientists now accept this.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser replied to the complainant explaining that she had reviewed the correspondence and watched the programme and did not consider that the majority of the points raised in the appeal had a reasonable prospect of success. The Senior Editorial Strategy Adviser did consider, however, that one of the points raised by the complainant should be considered by the Editorial Standards Committee. This was the complainant's assertion that the programme misled the audience by implying the

outcome of the long-term Cosmos study into cancer risk is a foregone conclusion.

The Senior Editorial Strategy Adviser said that she did not propose to put the remaining points to the Editorial Standards Committee.

The Senior Editorial Strategy Adviser noted that a number of the complainant's points related to the omission of particular information. The Senior Editorial Strategy Adviser explained that, while there is an absolute requirement for programmes not to mislead, it is a legitimate matter of editorial discretion which aspects of an issue to include. The Guidelines require that news and current affairs content observes "due accuracy" and "due impartiality". The Senior Editorial Strategy Adviser explained that section 4.1 of the Impartiality Guidelines covers the considerations for achieving due impartiality:

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

The Senior Editorial Strategy Adviser considered Impartiality Guidelines sections 4.4.1 and 4.4.2 in relation to the complainant's points. These say:

- We must be fair and open minded when examining the evidence and weighing material facts. We must give due weight to the many and diverse areas of an argument...
- Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead, we should seek to achieve 'due weight'. For example, minority views should not necessarily be given equal weight to the prevailing consensus.
- Nevertheless, the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output.

The Senior Editorial Strategy Adviser noted that *Bang Goes the Theory* is a popular science programme for a general (that is, non-specialist) audience. This half-hour programme included a section looking at the possibility of transferring energy without wires and the possibility of microwaves being used as a diagnostic tool to find breast cancer. The section on health effects took up around six minutes of the 27 minute programme.

The Senior Editorial Strategy Adviser considered that, in this context, due impartiality does not require that the programme should report on the assessments made in other countries or their different safety standards; neither would the audience expect a detailed or comprehensive review of the evidence, nor would it require an investigation into whether the mobile phone and Wi-Fi industries had sought to skew medical research. However, the Senior Editorial Strategy Adviser said that there would be a legitimate expectation that in the summary of the health issues raised, the programme weighed material facts and did not misrepresent them.

The Senior Editorial Strategy Adviser noted that in response to the complaint, the ECU

Complaints Director wrote:

“...the leading scientific and professional bodies which have conducted research and studies into the potential health effects of exposure to electromagnetic radiation have concluded that there is no persuasive evidence linking any such exposure to illness in humans. I appreciate you may dismiss the research which supports this conclusion but I think it was reasonable for the programme-makers to give ‘due weight’ to the available evidence and reflect this accordingly.”

The Senior Editorial Strategy Adviser noted the complainant argued that the programme ought not to have relied on the conclusions of a scientific researcher who “failed to identify” a single EHS patient and that, instead, the programme should have spoken to those who are involved with treating sufferers. She reiterated that it is for programme makers to decide what information to include and who to interview. Therefore, the Senior Editorial Strategy Adviser’s consideration was whether the researcher was a credible contributor and whether his conclusions appear to be in line with the current scientific consensus. In that respect, the Senior Editorial Strategy Adviser noted that in addition to the study he conducted which was described in the programme, Dr Rubin published a review in January 2010 which included 15 experiments done since his team’s last review of studies (2007), bringing the totals up to 46 double-blind experiments and 1175 individuals with claimed hypersensitivity. The peer-reviewed study which appeared in the academic journal *Bioelectromagnetics* confirmed the results of Rubin’s original review, that “no robust evidence could be found” to support the hypothesis that electromagnetic exposure causes EHS.

The Senior Editorial Strategy Adviser commented that, as the ECU finding noted, the International Commission on Non-Ionizing Radiation Protection (ICNIRP), which sets internationally recognised safety standards and is independent of commercial interests, gives credence to Dr Rubin’s conclusions alongside those of the World Health Organisation:

“Some people claim to be hypersensitive to EMFs in general. However, the evidence from double-blind provocation studies suggests that the reported symptoms are unrelated to EMF exposure (Rubin et al. 2005; WHO 2007a).

There is only inconsistent and inconclusive evidence that exposure to low-frequency electric and magnetic fields causes depressive symptoms or suicide (WHO 2007a). (page 821)”

The Senior Editorial Strategy Adviser also noted that the ECU finding referred to an ICNIRP factsheet issued in 2010:

“The scientific data available so far do not indicate that low frequency electric and/or magnetic fields affect the neuroendocrine system in a way that these would have an adverse impact on human health. There is no substantial evidence for an association between low frequency exposure and diseases such as Parkinson’s, multiple sclerosis or cardiovascular diseases. The evidence for an association between low frequency exposure and Alzheimer’s disease and amyotrophic lateral sclerosis is inconclusive. The evidence for an association between low frequency exposure and developmental and reproductive effects is very weak...”

It is the view of ICNIRP that the currently existing scientific evidence that

prolonged exposure to low frequency magnetic fields is causally related to an increased risk of childhood leukaemia is too weak to form the basis for exposure guidelines.”

The Senior Editorial Strategy Adviser noted that the Health Protection Agency (HPA) has issued the following advice on the use of mobile phones:

“There are thousands of published scientific papers covering research about the effects of various types of radio waves on cells, tissues, animals and people.

The scientific consensus is that, apart from the increased risk of a road accident due to mobile phone use when driving, there is no clear evidence of adverse health effects from the use of mobile phones or from phone masts. However there is now widespread use of this relatively new technology and more research is needed in case there are long term effects.”

And the HPA has issued the following advice on Wi-Fi:

“There is no consistent evidence to date that exposure to radio signals from Wi-Fi and WLANs adversely affects the health of the general population. The signals are very low power, typically 0.1 watt (100 milliwatts) in both the computer and the router (access point), and the results so far show exposures are well within the internationally-accepted guidelines from the International Commission on Non-Ionizing Radiation Protection (ICNIRP).”

The Senior Editorial Strategy Adviser said that, having reviewed the programme, she considered that its reflection of the issue was consistent with the conclusions of the WHO, the HPA and the ICNIRP.

The Senior Editorial Strategy Adviser noted the complainant had stated that scientists involved in treating sufferers have conducted reliable peer-reviewed studies which have established a causal link. She noted that this point was addressed by the programme producer in his letter to the complainant:

“You point out that a small minority of researchers and clinicians claim to have developed expertise to diagnose the condition, and believe that there is a causative relationship between the symptoms and electro-magnetic fields. Yet they remain unable to explain how that causative relationship might work. Some reference has been made to laboratory studies on one known effect of EMF on biological systems (calcium ion cyclotron resonance).

However this remains a proposed model with no conclusive explanation of how the effect may lead to clinical symptoms assigned to EHS. While such beliefs remain in the significant minority, fail to provide substantial clinical evidence, and lack any viable clinical explanation for the causative relationships between EMF and ill health, it would be irresponsible of the BBC to report those beliefs on a par with the prevailing scientific consensus.”

The Senior Editorial Strategy Adviser said that it seemed to her that the programme acknowledged that those people who identified themselves as suffering from the symptoms of EHS were genuine in terms of the suffering they described. The Senior Editorial Strategy Adviser cited the following extract from the programme:

Reporter: So if these symptoms aren't due to electromagnetic fields,

what are they due to? Because these people really are ill, aren't they?

Dr Rubin: Absolutely. So we think that people who think mobile phone signals or other electromagnetic fields are harmful, when they believe they've been exposed to them, it's that belief that can trigger their symptoms, rather than the actual exposure.

The Senior Editorial Strategy adviser noted the complainant's concern at the absence of a "case study" of an EHS sufferer; however, she said that the producer of the programme addressed the issue in his response to the complainant when he wrote:

"In researching and setting up the item for our programme, we looked from the outset for real, substantive incidences of localised EHS, from which we might highlight the prevalence of cases amongst populations in a specific area. The strongest example of such a concentration of cases appears to have been reported in Glastonbury.

We contacted representatives of residents and sufferers in Glastonbury. While a spokesperson did come forward and volunteer to speak, that spokesperson was a non-specialist campaigner with no personal experience of the symptoms associated with EHS, and no expertise with which to explain the processes involved. Despite our own best efforts, and those of this spokesperson, no actual sufferers of the syndrome were prepared to come forward to help us illustrate the syndrome. Unfortunately, in our dealings with representatives from Glastonbury, the organisation ES-UK was not mentioned, or we may indeed have sought contribution from one of your experts.

In the absence of any first-hand accounts, our decision to feature the councillor in Barnoldswick was intended to ensure the viewer was left in no doubt about the seriousness with which some members of the public take these concerns."

The Senior Editorial Strategy Adviser said that she did not consider that the lack of a case study raised an issue for consideration against the Guidelines, given that the programme reflected the issue in the script and in the exchange with Dr Rubin. She concluded that Trustees would be unlikely to take the view that an important perspective had been omitted, albeit that it was not included in the format that the complainant would have preferred.

Lastly, the Senior Editorial Strategy Adviser considered the complainant's assertion that the programme selected only interviewees who "deny" the existence of adverse health effects from EMFs. She said that she did not take the same impression from the programme. In the case of Dr Rubin, he related the results of a peer-reviewed study he had conducted into EHS. The contributor from the HPA addressed the concerns about cancer and explicitly did not deny there could be health risks. The Senior Editorial Strategy Adviser noted the relevant exchange:

Howard: Even after 26 years of research, there is still no medical way to explain how microwaves could cause cancer. But just a few studies have reported links, so there are people who won't rule out the possibility of new medical explanations. And despite a complete lack of proven cancer cases, the debate continues. Now, I looked at similar issues to these in

1986, and then, I pretty much would have guaranteed that by now, 26 years later, we would have definitive answers. Why haven't we?

Simon Mann, HPA: For a very long-term disease, one that maybe takes ten years or more to develop, obviously you can't know till that period has elapsed. We have data at the moment up to 10 to 15 years, but beyond that we can't know because people haven't been using phones for long enough. There's a very important study called Cosmos that the UK's taking part in, which is trying to do a much better assessment than was done in previous studies. It's doing that by following people forward in time, but we can't know the answer until the study's run its course.

The Senior Editorial Strategy Adviser concluded that, apart from the point already noted regarding the outcome of a study into cancer risk, the appeal should not proceed for consideration by the Editorial Standards Committee.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He cited international studies into cellular sensitivity to electromagnetic fields and radiation and said that the new scientific consensus is that it is impossible to maintain what he described as the viewpoint of the programme. The complainant argued against the proposition that sensitivity to electromagnetic radiation is a psychological effect based on fear of transmitters. The complainant said that several proposed mechanisms for electro-sensitivity are now established, and that it is not unusual for action to be taken against an environmental toxin before the precise pathway for the mechanism of harm is determined e.g. the case with smoking. The complainant argued that for the programme to leave the impression that there is nothing to worry about from low-level electromagnetic radiation is out of step with the majority of involved scientific research. The complainant reiterated his view that the programme presented issues of material substance without due weight given to both points of view.

The Committee's decision

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

The Committee noted that it would be considering one element of the complaint on appeal at a future meeting. Turning to the remaining points, the Committee noted that the complainant's interpretation of the available evidence was different from those of the experts who had been featured in the programme. The Committee did not agree, however, that the inclusion of those experts was evidence of a breach of the Guidelines. The Committee was mindful that the programme was not required to give equal weight to every view, but was required to maintain due accuracy and due impartiality.

The Committee noted that the programme had included the view that electromagnetic radiation does have harmful effects on health. The Committee agreed that it did not follow that the programme had breached the Guidelines because it had not represented this view in the way that the complainant would have wished, i.e. by featuring an EHS case study. The Committee was reassured by the response given to the complainant by the producer of the programme, which demonstrated in the Committee's view that

appropriate consideration had been given to the requirements of the Editorial Guidelines in researching and setting up the programme.

The Committee was satisfied that the programme makers had accurately represented the available evidence and had explained the currently prevailing scientific position on the question of the health effects of electromagnetic radiation whilst acknowledging that there are some areas where understanding is incomplete and further work needs to be done. The Committee did not agree that the programme had presented the “one-sided” view that the complainant alleged.

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

Have I Got News For You, BBC Two, 27 May 2011 and Have I Got A Bit More News For You, 2 May 2012

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit not to uphold his complaint regarding remarks made about the Royal Family and about German people on *Have I Got News For You* and *Have I Got A Bit More News For You*.

The complainant said that he found comments and camera shots within the programmes to be inappropriate and offensive. He felt that the BBC gave the clear impression that it had an anti-monarchist agenda whereas he believed that the BBC had "a duty to show respect to the Royal Family". The complainant said that the two editions of *Have I Got News For You* were offensive for the following four reasons:

- A close-up shot of the Queen's ankles was shown "in a most unflattering manner".
- It was unacceptable to use the word "bitch" in relation to the Queen, and the invented dialogue attributed to the Queen and Prince Philip was disrespectful and offensive.
- The programme included "silly remarks about German people" in the discussion about Nazis attempting to train dogs to talk, which amounted to "anti-German abuse".
- It was a "serious insult" to refer to Prince Charles as an "idiot".

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser replied to the complainant, explaining that she had viewed the programmes in question and did not consider that the appeal had a reasonable prospect of success. She did not propose to put the appeal to the ESC.

The Senior Editorial Strategy Adviser said that the applicable Editorial Guidelines were those relating to Harm and Offence. She explained that these Guidelines mean that programme makers must take into account the expectations of their audience and the context around any comments that may cause offence. However, it is not the case that any offence felt by viewers automatically means the Guidelines have been breached – people's opinions about what is offensive are so varied it would be impossible never to cause offence. The Guidelines require programme makers to use their judgement when deciding whether output is in line with "generally accepted standards". She said that programme makers should keep abreast of shifts in public opinion by using relevant research and ensure that comments which might be offensive are editorially justified.

The Senior Editorial Strategy Adviser was sorry that the complainant felt that these two editions of *Have I Got News for You* contained offensive material and that, particularly where the Royal Family is concerned, he felt that the remarks were in bad taste.

While the Senior Editorial Strategy Adviser understood that this was a subject about which the complainant felt very strongly, and it might be that he would consider any discourteous comments about the Royal Family to be unacceptable, she noted that there is a long tradition in the UK of topical satire, which sometimes involves the Royal Family. The Senior Editorial Strategy Adviser said that this stretches back to the 18th Century when James Gillray and Thomas Rowlandson, amongst others, were well known for satirising the Royal Family and continued in popular form with newspaper cartoons satirising topical issues. The Senior Editorial Strategy Adviser said that there have been many programmes on television which have carried on this tradition, including *That Was The Week That Was* and *Spitting Image*. The Senior Editorial Strategy Adviser noted that *Have I Got News For You* follows this tradition of topical satire and has been running with this format for more than 20 years. She said that the fact the programme is very well established with a loyal audience would mean that viewers of the programme would have a strong sense of the kind of material that it would broadcast and the programme makers would take that into account.

The Senior Editorial Strategy Adviser considered the four aspects of the complaint in turn. Firstly, the Queen's ankles, which the complainant said were shown in an unflattering manner. The Senior Editorial Strategy Adviser noted that the Head of Editorial Complaints had responded on this point at Stage 2 and wrote:

"...the only sequence this can refer to is one in which the Queen, Prince Charles, Prince Philip and President and Mrs Obama were reviewing troops in rather windy conditions. This was the only sequence in which the Queen's ankles were visible, but I could see no grounds for considering that they were shown in an unflattering manner, and they were not the subject of comment or special attention."

The Senior Editorial Strategy Adviser said that she had reviewed this section of the programme several times and agreed with this analysis. She noted that the Queen's ankles were barely visible and were on screen for less than one second. Given the context of President Obama's state visit to the UK, most viewers would not be surprised to see a clip of a Head of State meeting the Royal Family and would be unlikely to find this one shot of the Queen with her family and the President and his wife unflattering, as she has been shown in a similar position many times before.

The Senior Editorial Strategy Adviser did not consider that there was a reasonable prospect of an appeal successfully establishing that there had been a breach of the Harm and Offence Guidelines and she did not propose to put it forward to the Editorial Standards Committee.

The second point of the appeal was about an exchange later in the same programme which related to Prince Philip and the Queen engaged in role-play. The Chairman of the programme on this occasion, Bill Bailey, had asked which single salute led to the most rounds being fired. He continued: "Well, I'll tell you, it's 124 (...) This happens on a special occasion when the Queen and the Duke of Edinburgh do something together... It's something to do with a date..."

One of the contestants, Jack Whitehall, picked up on this and it prompted a flight of fancy that this was a "date-night" where Prince Philip and the Queen would engage in erotic role-play. It was in that context that Bill Bailey imagined the Queen might appear with a Hoover – the exchange continued:

Bill Bailey: So, she, she comes in with a Hoover or something?

Jack Whitehall: Yeah, and he'd be like 'Oooh'...

Bill Bailey: ...and he's like (does impression of the Duke of Edinburgh) 'Hey, Hoover it up, you bitch!' or something. (Audience laughs).

The Senior Editorial Strategy Adviser said that the exchange was taken by the audience to be a flight of fancy – and was humorous purely because the scenario imagined was so preposterous. Bill Bailey then explains that, in fact, the special gun salute only takes place when the Duke of Edinburgh's birthday and the Queen's official birthday coincide.

The Senior Editorial Strategy Adviser attached the transcript of this sequence, which she said clearly showed that it was meant to be taken as a joke. The Senior Editorial Strategy Adviser noted that the Head of Editorial Complaints had addressed this when he wrote:

"While I can see the potential for offence in such suggestions if made, or taken, seriously, I think they were so evidently fanciful in this instance as to avoid offensiveness,"

The Senior Editorial Strategy Adviser agreed with that analysis. She considered that viewers were being asked to imagine an absurd sequence which clearly had no basis in fact. While she understood that the complainant may have felt this sequence was in bad taste, the programme makers were required to take into account "generally accepted standards" for their viewers. The Senior Editorial Strategy Adviser did not believe that the sketch would have exceeded most viewers' expectations of the programme, therefore she did not consider that the appeal on this point should proceed to the ESC as it did not have a reasonable prospect of success.

The third element of the complaint was that the programme included "silly remarks about German people". As the Head of Editorial Complaints noted, this part of the programme related to a new book that had been published which claimed that the Nazis had tried to train dogs to talk. The Senior Editorial Strategy Adviser said that she agreed with the Head of Editorial Complaints' point that the programme did not derive humour from German people generally; the subject of the humour was in imagining what the dogs might have said. The Senior Editorial Strategy Adviser attached a transcript of this item. She noted that, in the programme, some of the panellists used exaggerated German accents. The humour was not aimed at German people generally and in fact ended-up with Bill Bailey being derided because his mock-German accent sounded nearer to Geordie.

The Senior Editorial Strategy Adviser did not believe that regular viewers of this show would have seen it as promoting anti-German sentiment, as the item was clearly explained as being about the Nazi era and the humour was derived from that context. Therefore on this point too the Senior Editorial Strategy Adviser did not consider that the appeal had a reasonable prospect of successfully establishing that there had been a breach of the Harm and Offence Guidelines.

The complainant's fourth point related to a reference to Prince Charles in the second programme on 5 May 2012, which the complainant described as calling him an idiot. The Senior Editorial Strategy Adviser attached a transcript:

Jeremy Clarkson: Good evening! Welcome to Have I Got News for You. I'm Jeremy Clarkson. In the news this week: Southeastern

Trains stage a publicity exercise to prove their new trains are idiot-proof.

(Clip of Prince Charles at the controls in the driver's section of a train – audience laughs)

The Senior Editorial Strategy Adviser noted what the BBC had said in its response to the complaint at Stage 1:

“Over 43 series ‘HIGNFY’ has established a reputation for satirising the week’s news and skewering the powerful. This is a key function, not just of the show, but of comedy generally and it would be rather unhealthy for performers, as well as wider society, if particular subjects were deemed to be off-limits. Given the frequency with which members of the Royal Family appear in the headlines and the powerful position they hold, it’s only natural that they will be mentioned on ‘HIGNFY’ with reasonable regularity. The same can be said of other powerful institutions such as governments, banks and churches.”

The Senior Editorial Strategy Adviser also noted the comments of the Head of Editorial Complaints at Stage 2, who suggested there was a difference between calling someone an idiot and describing a train as “idiot proof” and then revealing the driver to be Prince Charles.

The Senior Editorial Strategy Adviser said that she agreed with the Stage 1 response which said that it is an important job of comedy to satirise the powerful, and she considered that the programme would not have exceeded audience expectations on this point. The Senior Editorial Strategy Adviser noted that the point made by the Head of Editorial Complaints was a subtle one, but she believed he was right to raise the difference between a direct insult (that is, if the programme had simply broadcast “Prince Charles is an idiot”) and a visual gag that hinged on the audience not expecting to see Prince Charles driving a train. The Senior Editorial Strategy Adviser did not consider that this final element of the complaint stood a reasonable prospect of successfully establishing that there had been a breach of the Harm and Offence Guidelines.

Lastly, the Senior Editorial Strategy Adviser noted that the complainant had said that the number of complaints was not always an accurate indicator of offence as, in this case, only two complaints were received. She agreed that the number of complaints received is only one factor which can be drawn upon in assessing whether a programme has breached the BBC’s Editorial Guidelines. She said that, amongst other factors, audience research is also important. The Senior Editorial Strategy Adviser explained that the BBC had carried out research into taste and standards in broadcasting (http://downloads.bbc.co.uk/aboutthebbc/reports/pdf/taste_standards_qualitative.pdf).

She noted that, when looking at comedy, the report concluded:

“Comedy is arguably the most complex genre for the audience in this area of taste and standards. It is an extremely wide-ranging genre and opinions are often very subjective. Individual taste may permit or sanction what others may feel is in poor taste. For the majority, comedy overall comes with its own licence and even more specifically, each style of comedy/comedian has their ‘own’ licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience.”

“Audiences draw a distinction between a more derisive, potentially bullying tone and mockery, and as with the comedy genre, taste makes judgements quite subjective. How a line is delivered, and by whom, are crucial factors which define content as acceptable or unacceptable.

The absence of very strong language (the ‘f-word’) and lack of aggression are key discriminators, as is the personality of different presenters.”

The Senior Editorial Strategy Adviser said that, given the audience expectations for this long-running comedy series, the tone and content of the programmes and the research which gives comedians and presenters a good deal of individual licence, she did not believe that overall the complaint had a reasonable prospect of success and therefore did not propose to put it before the ESC.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that he wished the Trustees to consider his appeal request as he believed that, as Her Majesty’s loyal subjects, we should show respect to the Royal Family. The complainant said that the BBC should not be rude to the Queen and her family especially in her Jubilee year. He said that if a youth knocked on a pensioner’s door and displayed such abuse he would be prosecuted by the State.

The Committee’s decision

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

The Committee noted that the complainant held very strong views about the Royal Family. It noted the responses that the complainant had received from the BBC and the Senior Editorial Strategy Adviser and agreed that the programmes in question were not likely to exceed the expectations of the audience, taking into account the established satirical tone of Have I Got News for You and the available evidence relating to generally accepted standards. The Committee agreed that there was no reasonable prospect that it would find a breach of the Editorial Guidelines in relation to the complaint.

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

Application of expedited complaint handling procedure at Stage 1

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision by BBC News to apply the expedited complaints handling procedure to future complaints. The expedited handling procedure may be applied 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; and/or
- (c) in the case of the ECU, fall outside its remit; and/or
- (d) after rejection by the ECU or the department concerned, are persistently and repeatedly appealed unsuccessfully to the BBC Trust or the BBC Trust's Editorial Standards Committee (ESC).

In an email sent to the complainant on 18 May 2012, BBC News said it would not investigate any further complaints from the complainant about alleged BBC bias against Serbs for a period of two years unless they appeared to raise a substantive issue or disclose a serious prima facie case of a breach of the Editorial Guidelines where there is a significant prospect that the complaint might be upheld.

The complainant forwarded his most recent correspondence to the BBC Trust, saying that the BBC was trying to impose what he described as "a Kafka trial ban" on him.

The Trust Unit's decision

The Trust's Head of Editorial Standards replied to the complainant, explaining that she had reviewed the relevant correspondence and did not consider that the appeal had a reasonable prospect of success.

The Head of Editorial Standards provided an outline of the complainant's correspondence history and noted that he had made 32 separate complaints to the BBC News website over the past two years, and that the BBC News had recorded 53 complaints in the two years before that. These complaints all made the same allegation – that the BBC was biased against Serbs.

The Head of Editorial Standards noted that the complainant's appeal was based on the allegation that the BBC has shown constant bias against Serbs and Serbia over a number of years and, for that reason, it was justified for him to continue to make complaints about its output. She noted the complainant's belief that BBC News' decision to apply its expedited complaints handling procedure to him demonstrated the BBC's failing in producing impartial news.

The Head of Editorial Standards noted that the BBC had responded to and investigated the specific complaints but none had been upheld by the BBC. She noted, however, that

there had been some changes in wording to online articles as a result of exchanges between the complainant and the online team.

The Head of Editorial Standards also noted that the complainant had made two unsuccessful appeals to the BBC Trust, one relating to alleged anti-Serb bias in BBC output generally and one relating to a specific BBC News online article.

The Head of Editorial Standards said that since the decision of the Editorial Standards Committee not to take his appeal alleging general anti-Serb bias⁵, the complainant had emailed the BBC on more than 30 separate occasions to complain about a range of online articles that he believed demonstrated the BBC's bias against the Serbs and Serbia. She noted that none of these had been upheld or proved to raise substantive editorial issues.

As a result, the Head of Editorial Standards believed that the BBC was correct to apply its expedited complaints handling procedure to any complaints he made over the next two years. She said that, as no substantive issues had been raised by the past correspondence, it was taking up a disproportionate amount of BBC time and consequently of the licence fee.

The Head of Editorial Standards noted that the BBC would continue to read the complaints and would investigate them if they appeared to raise a substantive issue or disclose a serious prima facie case for a breach of the BBC Editorial Guidelines.

The complainant requested that the Trustees review the decision not to proceed with his appeal. He repeated his view that the BBC is institutionally prejudiced against Serbs and cited further examples which he claimed supported his view. The complainant provided further correspondence with the BBC which was not included in the outline given by the Head of Editorial Standards in her decision. The complainant also provided a document from a third party, dated July 2009, which asserted that the BBC was biased in its coverage of Serbs and Serbia.

The Committee's decision

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

The Committee noted the complainant's correspondence history, and that in his response to the Head of Editorial Standards' decision he had provided information on additional correspondence which the Head of Editorial Standards had not included. The Committee also noted that it had previously decided (in January 2010) that an appeal alleging general anti-Serb bias did not raise a matter of substance and should not be taken. The Committee noted that over the course of the last 4 years an exceptional amount of correspondence had been received from the complainant on the same issue, and that no complaints had been upheld or proved to raise substantive editorial issues. The Committee agreed that the complainant had not provided any new evidence which provided a prima facie case for the assertions of bias and that there was no reasonable prospect of success for an appeal against the decision of BBC News to apply the expedited complaint handling procedure.

The Committee was particularly mindful that the expedited complaint handling procedure

⁵ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/jan.pdf

did not mean that the BBC could ignore future complaints from the complainant, but that it was not required to expend resources on responding where there was no substantive issue or a prima facie case that the Guidelines had been breached.

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

Look East, BBC One

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

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision by BBC Audience Services to cease further correspondence with the complainant regarding his allegation that the western counties of BBC East were under-represented in the regional news programme *Look East*.

BBC Audience Services said that they had nothing to add that hadn't already been said to the complainant in the correspondence from the Director of News and the former Head of the East region on this issue.

In his appeal to the Trust, the complainant said that he had spent many hours monitoring the content of the programme in order to bring to the BBC's attention his view that *Look East* favours counties on the eastern side of the region to the detriment of those in the west.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser replied to the complainant, explaining that she had read the relevant correspondence and did not consider that the appeal had a reasonable prospect of success. She did not propose to put the appeal to the Editorial Standards Committee of the Trust.

The Senior Editorial Strategy Adviser said that she appreciated this was a matter about which the complainant felt strongly and that he had conducted a good deal of his own research on the subject. However, she explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser said that decisions relating to the amount and type of coverage which issues receive fall within the category of editorial and creative output and are the responsibility of the BBC Executive rather than the Trust.

The Senior Editorial Strategy Adviser noted that the complainant's concerns had received careful consideration and detailed replies from both the BBC East Head of Region and the Director of BBC News. She noted that in his first reply, the Head of Region wrote:

"I think you're right to fight Northamptonshire's corner and our aim within the limits of our budgets is to continue to use new technology and new facilities to improve the service right across the patch which remains geographically the biggest English Region and therefore in many ways the most challenging but also in my mind the most vibrant, diverse and interesting."

The Senior Editorial Strategy Adviser noted that the Director of News wrote to the

complainant and added to this, outlining how she hoped new technology would help to improve the coverage in Northamptonshire, writing:

“We now have more reporters based in Northamptonshire and as you point out technology is helping us cover the area better – these days that includes a new range of lightweight cameras and a live vehicle covering just the west of the region. Over the years that means the TV coverage of the county has been transformed from the days you mention with a far higher story count.”

The Senior Editorial Strategy Adviser noted that the complainant wrote to the Head of Region again to outline, among other things, discrepancies in the military funerals which had been covered in the TV bulletins. She noted he had replied with the explanation that on a relatively quiet news day, a story might be higher up the bulletin than on a busier day and equally, a story might have some additional resonance that meant it was perceived as a stronger item. She noted in particular that he had said:

“None of that detracts or changes the importance of the event and we always try to make sure we cover the event while respecting the wishes of the family.”

The Senior Editorial Strategy Adviser also noted that the Head of Region had described that, to his mind, what was important was that the families of those who had died were able to see the reports:

“I don’t buy the argument that whether they appear in the overall programme or in the local section matters. What surely matters is that friends family and colleagues get to see the item and that is very much a question of location.”

With regard to the survey of television coverage that the complainant had undertaken, the Senior Editorial Strategy Adviser noted that the Head of Region had written:

“Thank you for your survey. We do set targets for producers and monitor them when appropriate. We have the advantage of being able to monitor all elements of the programme and where coverage of a county falls short our aim is to work to remedy that balance.”

She noted that he had also outlined the technical issues which limited the areas that individual transmitters covered.

The Senior Editorial Strategy Adviser explained that the BBC has a responsibility to be fair, accurate and impartial across its output, to provide a right of reply to individuals and groups as and when appropriate and to ensure that no-one or no one group is unfairly represented. These responsibilities are reflected in the BBC’s Editorial Guidelines. In this context, she explained that if the complainant were to make a complaint about a specific programme then it would be possible to consider that against the guidelines. However, she noted that the appeal to the Trust was one of general bias against Northamptonshire.

She reiterated that decisions about what items to cover in news bulletins are a matter of editorial judgement and remain the responsibility of the Executive. Having reviewed the correspondence, the Senior Editorial Strategy Adviser could see no evidence of a general bias against Northamptonshire. In fact, she noted, it seemed that the technical resources available to cover Northamptonshire had improved and the number of reporters covering the area had also risen.

Given that the complaints had not been about specific editions of *Look East*, and that they

had received thoughtful responses, the Senior Editorial Strategy Adviser concluded that it seemed reasonable for the BBC to say that it could not respond to any further correspondence on this issue.

The Senior Editorial Strategy Adviser said that, in her opinion, the Trustees would be of the view that, given the complainant had already received detailed responses to his concerns from the Head of Region, BBC East and the Director of BBC News, the response from BBC Audience Services was reasonable. She did not consider that the appeal had a reasonable prospect of success and did not propose to put it before the Trustees.

The Committee's decision

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

The Committee noted that this was an issue of concern to the complainant to the extent that he had gone to some trouble to conduct his own survey. The Committee acknowledged the importance which the complainant attached to the issue and the reflection of the level of engagement that the BBC's regional news inspired.

Notwithstanding this, the Committee agreed that the complainant's concerns had received reasoned and thoughtful responses at Stage 1. The Committee agreed that it appeared, on the evidence before it, to be reasonable for BBC Audience Services to have decided that there would be nothing further to be gained from continued correspondence on the same issue. The Committee agreed that, in the absence of any specific allegations relating to editorial standards, there was no reasonable prospect of success for an appeal against BBC Audience Services' decision not to correspond further on this issue.

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