

Editorial Standards Findings

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

February 2012 issued March 2012

| | |
|---|-----------|
| Remit of the Editorial Standards Committee | 1 |
| Summary of findings | 3 |
| Appeal Findings | 7 |
| <i>Fallout – The Legacy of Chernobyl</i> , BBC Radio 4, 26 April 2011 | 7 |
| “Heated debate over Palestinian prisoners in Israel”, BBC Online | 15 |
| <i>Newsnight Scotland</i> , BBC Scotland, 1 July 2010 | 25 |
| <i>Secret Iraq</i> , BBC Two, 6 October 2010 | 33 |
| Rejected Appeals | 45 |
| <i>The One Show</i> , BBC One, 16 May 2011 | 45 |
| <i>Today</i> , BBC Radio 4, 29 July 2011; “‘Torrent of abuse’ hindering ME research”, BBC News Online | 54 |
| <i>Kara Tointon: Don’t Call Me Stupid</i> , BBC One, 18 January 2011 | 61 |
| <i>Countryfile</i> , BBC One, 14 August 2011 | 66 |
| High-pitched noises on the BBC News Channel (appeal out of time) | 68 |
| <i>Off the Ball</i> , BBC Radio Scotland, 14 May 2011 | 70 |
| “Eastern European migrants ‘add £5bn’ to Britain’s GDP”, BBC News Online | 73 |
| Complaint handling | 78 |
| <i>Secret Iraq</i> , BBC Two, 6 October 2010 | 84 |

Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

The Committee comprises five Trustees: Alison Hastings (Chairman), Mehmuda Mian, David Liddiment, Richard Ayre and Lord Williams. It is advised and supported by the Trust Unit.

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

The Committee will consider appeals concerning complaints which allege that:

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Fallout – The Legacy of Chernobyl, BBC Radio 4, 26 April 2011

Three separate appeals were received by the BBC Trust raising a number of allegations against the BBC Radio 4 programme, *Fallout: The Legacy of Chernobyl*. The Trust's Editorial Standards Committee (ESC) decided not to accept on appeal all but one of the points raised by the complainants. This decision is published at http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/jan.pdf.

The complaint considered on appeal was that the programme inaccurately stated the geographic spread of the radioactive fallout from Chernobyl, leaving the audience with a misleading impression of the extent of the area contaminated.

The Committee:

- noted that the use of the figure of 75,000 square miles was not strictly accurate and that the programme makers had acknowledged that radioactive material from the Chernobyl explosion spread beyond the area identified in the programme.
- noted that a minority scientific view exists that contends that the effects on human health have been felt beyond 75,000 square miles, but that the weight of opinion amongst the majority of scientists is that the impact on human health was broadly confined to 75,000 square miles.
- concluded that, in the context of a programme which attempted to reach some conclusions on the health effects of the fallout from Chernobyl, it was reasonable that the programme focused its attention on that area where the consensus suggests there has been a statistically significant impact on health and that the 75,000 square mile figure was a reasonable one to state.
- concluded that the impact of the figure and the way in which it was presented was clearly intended to convey an image of a very large area of contamination, and the audience would have been left with the impression that a major disaster had occurred over a very large area.

The complaint was not upheld

For the finding in full see pages 7 to 14.

"Heated debate over Palestinian prisoners in Israel", BBC Online

The complainant said that an article on the BBC website covering the subject of Palestinian political prisoners inaccurately compared the conditions for Palestinian prisoners held in Israel with those of Gilad Shalit, an Israeli soldier who was at the time of the publication of the article being held by Hamas. The complainant said that the article speculated on the conditions of Mr Shalit's imprisonment and was not balanced. He also said that he found parts of the report to be insensitive and offensive.

The Committee concluded:

- that it was clear the description of the conditions of Mr Shalit's incarceration were reported in the article as assumptions, not proven fact.

- that the assumptions which were made in the article fulfilled the guideline requirements which require that output be well sourced, based on sound evidence and presented in clear precise language.
- that, as a result of Mr Netanyahu, in a recent speech, linking Mr Shalit's plight with terrorists in Israeli prisons, the issue had become a media story and a legitimate line of inquiry for the article and it was editorially justified for the reporter to report on this issue and to frame the story in the way she had.
- that in setting the issue of Mr Shalit alongside that of Palestinian prisoners in Israel the article did not suggest the two were equivalent
- that readers would not be left with the impression that there was no difference between the treatment or the circumstances of Palestinian prisoners in Israel and those of Mr Shalit.
- that the figure cited by the complainant for the percentage of the Palestinian population currently in prison was not relevant to the consideration of whether the article wrongly accepted the claim that most Palestinian families would, at some stage, have had one of their number imprisoned. This was because it represented convicted prisoners for the year of 2011 only and in any event its number equivalent was reported in the article correctly.
- that the reference to 800,000 Palestinian prisoners in the article was duly accurate, in that it was sourced and qualified in the reporter's text. It was clear that this figure was over an extended period and did not represent the current prison population. In addition, there was a sound basis for reporting the figures as they could be independently corroborated from a number of other sources.
- that the article was duly accurate in stating that "few Palestinian families have never had a member in jail". This was reasonable phrasing to express how the detention of Palestinians over the years had affected virtually every Palestinian family, and it accurately reflected the continued symbolic importance of the Palestinian prisoner issue.
- that, with regard to the allegation that the article was insensitive and would have offended Mr Shalit's family, friends and supporters, the BBC had exercised the editorial freedom provided for in the guideline on Impartiality. The BBC had demonstrated ample editorial justification for framing the article in the way it did.
- that, noting the complainant had made a general assertion of institutional bias without providing any evidence in support of this assertion except in relation to the article under consideration, there was no evidence in the article of any BBC bias and there was therefore no case to answer in respect of the complaint of institutional bias.
- that, while it was sorry for any delays the complainant may have experienced in the handling of previous complaints, the Committee had not seen any evidence to suggest that these delays were the result of institutional bias.

The complaint was not upheld.

For the finding in full see pages 15 to 24.

Newsnight Scotland, BBC Scotland, 1 July 2010

The complainant, who represents the Scottish Council concerned, appealed to the Trust following the Editorial Complaints Unit's (ECU's) decision to partially uphold complaints against Reporting Scotland and Newsnight Scotland at Stage 2 of the BBC's complaints process. The element of the complaint considered by the Trust on appeal was the allegation that the Newsnight Scotland report created a misleading impression that the Council was the vendor of 67 hectares of green belt land which was sold to a developer in July 2001. The complainant also said that the alleged misleading impression was demonstrated in the way the report was interpreted by local newspapers and viewers who had contacted the Council.

The Committee noted that the BBC could not be held responsible for the journalism of third parties and concluded:

- that a court case cited by the complainant, which concerned a newspaper article and letters, was not relevant to this appeal, which concerned whether the BBC report had breached the Editorial Guidelines.
- that any principles applied in that case regarding the meaning to be attributed to words was not relevant to the Committee's consideration of whether there had been a breach of the Editorial Guidelines.
- that the report did not create a misleading impression that the Council was the vendor of the 67 hectares of green belt land.
- that the report had been factually accurate in its description of the sale of the land and that there had not been any breach of the Editorial Guidelines on accuracy in this regard.
- that it endorsed the ECU's upheld findings at stage 2 of the process (the ECU having upheld two of the original five aspects of the complaint) and that these decisions were not inextricably linked with the aspect of the complaint brought to appeal, as the complainant had alleged.
- that the Newsnight Scotland investigative report covered legitimate stories which were in the public interest to bring to the attention of BBC viewers in Scotland.
- that, in relation to the points of appeal, the BBC had not distorted known facts, presented invented material as fact or otherwise undermined the audience's trust in the BBC's content which was the subject of this appeal, and had therefore not breached the BBC's Editorial Guidelines on accuracy.

The complaint was not upheld.

For the finding in full see pages 25 to 32

Secret Iraq, BBC Two, 6 October 2010

The complainant said that the programme presented a one-sided view of the role of the Americans and British in the post-invasion period of the Iraq war. The complainant said that the programme breached the Editorial Guidelines on impartiality and that the complaint should be considered under the guidelines on Controversial Subjects. The BBC Trust's Head of Editorial Standards said that the complaint about the impartiality of the programme as a whole did not meet the criteria for consideration on appeal. However, the Head of Editorial Standards accepted on appeal the specific complaint of bias in the programme's treatment of the situation in Basra, in particular the use of an interview with Tony Blair.

The Committee concluded:

- that, with regard to the applicability of the Controversial Subjects section of the 2005 Editorial Guidelines, while provision was made for output to be considered over a period of time, this did not preclude their application to a single programme if it was necessary to do so to achieve impartiality.
- that the subject of the programme is a controversial one but that, at the time of broadcast, the subject was not highly controversial and nor was a decisive moment expected.
- that it was not necessary for all the main views to have been reflected in this particular programme.
- that, within the context of the programme's stated approach, an appropriate range of views had been reflected and the programme had not misrepresented the views of those in agreement with the coalition's post-invasion strategy, and as such met the requirements of due impartiality.
- that the inclusion of the interview with Tony Blair and those with American politicians who supported the coalition strategy was fair in illustrating the disjunction between what was being said by the Governments of the time and a range of people who were then actively engaged on the ground.
- that it did not agree with the complainant's view that interviews with those who supported the coalition strategy, most notably that of Tony Blair on the Andrew Marr programme, were included to support "the overall negative stance of the programme".

The complaint was not upheld.

For the finding in full see pages 33 to 44.

Appeal Findings

Fallout – The Legacy of Chernobyl, BBC Radio 4, 26 April 2011

1. Background

On the 25th anniversary of the Chernobyl nuclear disaster, presenter Nick Ross travelled to the Ukraine and to the ruined plant at Chernobyl. He met survivors of the explosion and talked to scientists and doctors to try to find out why there is still no consensus on the full impact of the disaster. The programme coincided with the aftermath of the Japanese earthquake and radioactive leaks at the Fukushima nuclear plant which took place in March 2011.

Three separate appeals were received by the Trust in relation to the programme. Each complainant had originally raised a number of allegations at earlier stages of the appeal process and had received responses at Stage 1 from either BBC Complaints, the producer of the programme or the presenter. At Stage 2 responses were handled by the Editorial Complaints Unit (ECU).

The ECU upheld two points at Stage 2 which had been raised by parties to this appeal. Details of the ECU finding in relation to these issues can be found on the BBC website at http://www.bbc.co.uk/complaints/comp-reports/ecu/ecu_fallout260411

The three appeals requested that the BBC Trust review a number of the ECU findings where allegations were not upheld.

There was significant congruity of the issues raised on appeal by the respective complainants; it was therefore decided at a meeting of the Editorial Standards Committee (ESC) on 1 December 2011 to adopt a consolidated approach to the appeals received, in accordance with the Trust's Editorial Appeals procedure which states:

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

The Trust's Editorial Appeals procedure also states:

Your appeal must raise a matter of substance – in particular, that, in the opinion of the Trust, there is sufficient evidence to suggest that the appeal has a reasonable prospect of success and there is a case for the BBC Executive to answer. Consideration will also be given to whether it is appropriate, proportionate and cost effective for the Trust to address an appeal.

With the exception of one allegation, which was not specifically raised in the appeals to the Trust but which had been raised by two of the complainants in their original complaints, the Head of Editorial Standards for the BBC Trust considered that none of the remaining points in the consolidated appeal would have a reasonable prospect of success were they to proceed to appeal. The Head of Editorial Standards' decision not to proceed with these points of appeal was challenged, and considered by the Committee at its meeting in January 2012. The Committee decided that the following points should not proceed on appeal (the decision in full can be found at http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/jan.pdf):

- the allegation that a right to reply should have been offered to those concerned about nuclear power
- allegations concerning the description of events at Fukushima and comparisons drawn with Chernobyl, including:
 - regarding the accuracy with which the programme reported the Japanese authorities' distribution of stable iodine tablets
 - allegations that the programme minimised events at Fukushima
 - the allegation that the programme failed to acknowledge the evidence that both explosions were "prompt criticality events"
- allegations regarding those whose views the programme chose to reflect, including:
 - that the programme presented Western views as carrying greater weight than those of scientists from the region affected, which carried less weight
 - that the views of "regional" scientists were reflected in a way which often contained language which demonstrated the programme's bias against scientists from the region
 - that the programme omitted entirely a significant body of work, "Chernobyl: Consequences of the Catastrophe for People and Nature", which challenged the prevailing consensus as articulated in the Chernobyl Forum's conclusions
- allegations regarding what aspects of the health impact the programme chose to report and how the programme reflected the range of perspectives, including:
 - that research that supported more serious health consequences and higher numbers of fatalities than the majority "western" consensus (as reflected in the programme) was dismissed as alarmist or a myth
 - that no attempt was made to detail the evidence for the more serious health impacts which had been dismissed as alarmist or a myth
 - that the programme should have given the authors holding the "alarmist" views the opportunity to respond to the charge
 - that there was no reflection of the view that the health impact on the general population in the area affected was greater than the consensus suggests (as opposed to the "liquidator" or clean-up workers population)
- allegations that the programme placed too much emphasis on cancer as an indicator or health risk and where it acknowledged mental health issues, it understated their validity and severity; the programme did not reflect the evidence from studies which show somatic [physical] effects and significant impacts on mental health
- the allegation that the language used to describe thyroid cancer was misleading
- the allegation that Gerry Thomas made the inaccurate claim that Britain was not exposed to radiation from Chernobyl
- an allegation that the sequence in which Vadim Chumak measured levels of radiation in and around Chernobyl was misleading

- the allegation that the programme failed to distinguish between internal and external radiological exposure
- an allegation that the programme did not explain the controversy surrounding the Linear No Threshold model used to determine the health risks of radiation (particularly at low levels)
- the allegation that the programme was not impartial in suggesting that it is “fear of radiation” rather than the radiation itself which is the cause of concern when it comes to nuclear power and effects of low level radiation on human health
- the allegation that the use of birdsong in the wildlife sequence distorted the meaning of the words, leaving listeners with the impression that the area was safe

The allegation considered on appeal was that the programme minimised the area of contamination from the explosion in 1986 at the Chernobyl nuclear reactor in the Ukraine, resulting in an inaccurate and misleading impression.

2. Applicable Editorial Guidelines

Accuracy

3.1 Introduction

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

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

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

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

Where appropriate to the output, we should:

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

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

3.2 Principles

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

3.2.2 All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We

should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

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

3.2.4 We should normally acknowledge serious factual errors and correct them quickly, clearly and appropriately.

Impartiality

4.1 Introduction

Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services - television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will 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 BBC Agreement forbids our output from expressing the opinion of the BBC on current affairs or matters of public policy, other than broadcasting or the provision of online services.

The external activities of staff, presenters and others who contribute to our output can also affect the BBC's reputation for impartiality. Consequently, this section should be read in conjunction with Section 15: Conflicts of Interest.

4.2 Principles

4.2.1 We must do all we can to ensure that 'controversial subjects' are treated with due impartiality in all our output.

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

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

4.2.4 We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.

4.2.5 We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

3. 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. The Committee noted that the subsequent submission from one of the complainants in response to the Editorial Adviser's report concerned points which the Committee had decided at its previous meeting did not qualify to proceed.

The Committee considered the allegation that the programme inaccurately stated the geographic spread of the radioactive fallout from Chernobyl, leaving the audience with a misleading impression on the extent of the area contaminated.

In respect of the points made by the complainants about the area of contamination, the Committee considered whether the data was:

- well sourced
- based on sound evidence
- thoroughly tested
- presented in clear, precise language

In respect of the points made by the complainants the Committee considered whether the BBC knowingly and materially misled its audiences with its content. In particular whether it:

- clarified the nature of the content by labelling to avoid being misleading
- distorted known facts
- presented invented material as fact
- otherwise undermined the audience's trust in the BBC's content

The Committee noted the section of script relevant to the appeal. It noted that the section began three minutes from the start of the programme. Listeners would have already heard on the programme a series of archive news clips from Chernobyl 25 years earlier and more recent clips from Fukushima. Intercut with these was Nick Ross's narration: he posed the key questions the programme was seeking to address and explained in simplified form the sequence of events at Chernobyl, drawing some parallels with Fukushima. Mr Ross continued:

"But while the reactors in Japan had several layers of shielding, at Chernobyl the roof was all that separated the doomed reactor from the outside world. With that roof gone hot graphite around the core was exposed to air and caught fire. Smoke billowed high into the atmosphere spreading radioactive isotopes over seventy five thousand square miles of Europe. Anti nuclear campaigners who are now focusing their attention on Japan believe there's been a huge death toll from Chernobyl. It's been widely reported that half a million people have already died with many more likely to become victims in the future. The radiation has been blamed for a huge range of illnesses as well as stillbirths and deformities two decades after the catastrophe."

The Committee noted how two of the complainants to the appeal had framed their concerns in regard to this point:

"According to the EU, the Chernobyl plume in fact contaminated 3,800,000 sq km of Europe. See table 3.1 of the independent TORCH report at www.chernobylreport.org "

"Nick Ross has falsely shrunk the area to a miniscule level. This area is barely a third of the Ukraine alone.

"Trace atmospheric radioactivity from Chernobyl is still being picked up now by High Volume Air monitors around the world. Most actually fell outside of Belarus, Ukraine and European Russia (which received the highest concentrations), around the northern hemisphere, including contaminating the UK as it dispersed. Austria, Czech Republic, Bulgaria, Romania, Republic of Moldova, Poland, Sweden, Norway, Finland, Slovenia, Hungary, Switzerland, Greece and Italy received levels of radiation (above 37 kBq/M²) that technically defined them as 'contaminated'. UNSCEAR reported fallout over a combined area of 30 million square miles."

The Committee noted how the ECU reached its finding:

"The programme-makers tell us that they referred to the 75,000 square mile figure because this is the undisputed area of significant contamination. They accept that lower levels of contamination did extend beyond this area but say the level of radioactive contamination was limited and there is no reliable evidence that it has led to demonstrable adverse health effects.

"It does appear to be the case that the majority of reports into the Chernobyl disaster put the area of significant contamination in the region of 200,000 square kilometres (approximately 75,000 square miles). I note that the Chernobyl Forum report ('Chernobyl's Legacy: Health, Environmental and Socio-Economic Impacts', second revised version, says that more than 200,000 square kilometres of Europe received levels of radioactive Caesium 137, and that this 'is still measurable in soils and some foods in many parts of Europe'. Reports by other international organizations note that some contamination spread beyond that area and across most of the northern hemisphere, but conclude that the level of contamination was comparable to natural background radiation, and therefore of little radiological significance."

The Committee noted the ECU's citing of The United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) report from 2000:

"Radioactive contamination of the ground was found to some extent in practically every country of the northern hemisphere... In this Annex, contaminated areas are defined as areas where the average ¹³⁷Cs deposition densities exceeded 37 kBq m⁻² (1 Ci km²). Caesium-137 was chosen as a reference radionuclide for the ground contamination resulting from the Chernobyl accident for several reasons: its substantial contribution to the lifetime effective dose, its long radioactive half-life, and its ease of measurement. As shown in Table 5, the contaminated areas were found mainly in Belarus, in the Russian Federation and in Ukraine."

The Committee noted too the ECU's citing of UNSCEAR's current online assessment of the radiation effects of Chernobyl:

"Outside Belarus, the Russian Federation and Ukraine, other European countries were affected by the accident. Average national doses there were less than 1 mSv in the first year after the accident with progressively decreasing doses in subsequent years. The average dose over a lifetime in distant countries of Europe was estimated to be about 1 mSv. These doses are comparable to an annual dose

from natural background radiation (the global average is 2.4 mSv) and are, therefore, of little radiological significance.”

The Committee noted the conclusion of the ECU Complaints Director that UNSCEAR’s view is also held by the majority of scientists and experts who have studied the effects of Chernobyl:

“I appreciate that the organizations ... referred to are regarded by some as pro-nuclear and therefore likely to downplay the effect of contamination. I am also aware that some studies such as the TORCH report by Dr Ian Fairlie and David Sumner postulate that such organizations fail to present estimates for European and worldwide ‘collective doses’ of radiation. In the light of those points, I accept that it would have given the audience a fuller picture if Nick Ross had made it clear that the area to which he was referring was the area which most scientists say was affected by significant levels of radiation (in relation to the potential impact on human health). However I do not believe that the wording he used would have given a seriously misleading impression to listeners bearing in mind the context of the programme and the lack of evidence of demonstrable health effects outside this 200,000 square kilometre area.”

The Committee noted the comments from the programme’s producer when asked to respond to the allegation:

“Radiation from the Chernobyl accident did not spread in a neat pattern. Various forms of radioactive material, some short-lived some long-lived, were distributed across wide areas of Eastern Europe and beyond, in patterns dictated by topography and prevailing weather. Raised radiation levels were detected over an area of 200,000 square kilometres, including the Welsh valleys. But the levels of radiation, and associated health risk, become vanishingly small towards the extremities of that area. I spoke to senior scientists involved in the monitoring of radiation levels in Wales, who told us that there had never been any health risks from the very low levels detected, and that monitoring was largely pursued as a ‘public relations exercise’.”

It noted too, the points made by the presenter Nick Ross, reinforcing points made earlier in response to the complaint:

“Precision on this figure is impossible. Ultimately the radiation from Chernobyl will have spread right across the globe, as will molecules from my last breath. I had to select what was meaningful in terms of manifestly dangerous contamination. I contend that, ‘Smoke billowed high into the atmosphere, spreading radioactive isotopes over seventy-five thousand square miles of Europe’ gives a clear indication of danger, and that to have cited a wider area would have been more, not less, controversial unless I had devoted considerably more time to explaining the parameters.

“While I did consider spending more time on this issue, and give maximum and minimum estimates, I decided that approach would be too cumbersome...

“Part of my reasoning in allowing concision to trump fastidiousness here was that I considered very few listeners would have had a mental picture from this passing reference of 75,000 square miles as being any different from, say, 35,000 square miles or 150,000 square miles. These are all big numbers which are hard to visualise.

“Finally the 75,000 square mile figure was intended to convey the impression of a very large area, not a small one, and this was very much the spoken emphasis I

gave it. There is no way this can reasonably be interpreted as an attempt to belittle the problem.”

The Committee noted that the use of the 75,000 square mile figure was not strictly accurate and noted that the programme makers had acknowledged that radioactive material from the Chernobyl explosion spread beyond the area identified in the programme.

The consideration for the Committee was whether the programme fulfilled the guideline requirement for due accuracy in how it reflected the issue: crucially whether the audience would have been materially misled. The Committee noted that a minority scientific view exists that contends that the effects on human health have been felt beyond the 75,000 square miles, but that the weight of opinion amongst the majority of scientists is that the impact on human health was broadly confined to the 75,000 square miles.

The Committee considered the context of the programme, which was to attempt to reach some conclusions on the health effects of the fallout from Chernobyl. In that respect the Committee concluded that it was reasonable that the programme focused its attention on that area where the consensus suggests there has been a statistically significant impact on health and that the 75,000 square mile figure was a reasonable one to state.

The Committee considered whether by choosing to use the 75,000 square mile figure the programme minimised the extent of the contamination to a “miniscule area” as contended by one of the complainants. The Committee decided that on the contrary, the impact of the figure and the way in which Nick Ross presented it was clearly intended to convey an image of a very large area of contamination; in the Committee’s judgement the audience would have been left with the impression that a major disaster had occurred over a very large area.

Finding: Not Upheld

“Heated debate over Palestinian prisoners in Israel”, BBC Online

1. Background

The article was published on BBC Online shortly after the Israeli Prime Minister, Benjamin Netanyahu, announced government plans to make conditions tougher for Palestinian prisoners in Israeli jails. The announcement came as Israel marked Gilad Shalit's fifth year in captivity with Hamas continuing to refuse the Red Cross access to the imprisoned soldier. The reporter began her article at a museum in the West Bank which tells the stories of Palestinian political prisoners from the British Mandate period to the present day. The feature discussed the sensitivity and importance of the issue for Palestinians.

The complainant said the article for BBC Online speculated on the conditions of Mr Shalit's imprisonment and was not balanced. The complainant also said he found parts of the report to be insensitive and offensive.

2. The complaint

Stage 1

The complainant wrote to BBC Audience Services on 11 July 2011 complaining that the report: speculated on the conditions of Mr Shalit's imprisonment without any hard evidence; compared Mr Shalit's conditions with those of Palestinian prisoners held by Israel; implied that Israel had a unique problem with the imprisonment of people who regarded themselves as “political prisoners” and finally that the report was insensitive to the family of Gilad Shalit.

The Middle East Editor of the BBC News website replied to the complainant on 9 August 2011. He said the correspondent who had written the report had spoken extensively to Gilad Shalit's family, and they had described to her in detail the conditions they believed their son was being kept in. In addition the Israeli press had also speculated on this in detail and at some length. He said the comparison between Mr Shalit and the Palestinian prisoners was one frequently made in the reports of Israeli human rights groups (although he conceded this was not an “absolute objective” comparison) and he went on to say that the report did not suggest that Israeli treatment of Palestinian prisoners was unique.

He concluded that he did not believe the article was insensitive in any way to Gilad Shalit or his family. He apologised for not replying to the complainant in the prescribed time frame.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU), the second stage of the BBC's complaints procedure, on 9 August 2011. He set out three grounds of complaint. First, he said that opinion was being cited as fact in that there was no “objective comparison” between Gilad Shalit's detention and that of Palestinian prisoners, something that the BBC News website's Middle East Editor had conceded; the complainant added that another example was the sentence which claimed that few Palestinian families had never had a member in jail. Second, he said the report lacked balance in viewing the Israeli prison system “from the perspective of a Palestinian museum... [it] had uncritically accepted Palestinian self mythologizing”. Third, the complainant said the use of Mr Shalit's imagined treatment as a yardstick of prison brutality was insensitive.

The Complaints Director, ECU replied to the complainant in full on 15 September 2011. The complaint was considered in relation to the Editorial Guidelines, in particular the guidelines on Accuracy and Impartiality, and Harm and Offence. The complaint was not upheld on the following grounds:

First, whilst the Complaints Director agreed that it was not possible to say with absolute certainty the precise conditions faced by Mr Shalit, there was considerable circumstantial evidence indicating that the conditions in which he had been held were along the lines described in the report. He also pointed out that the link between the treatment of Mr Shalit and that of others did not originate in the article itself but had been specifically made by Mr Netanyahu in his speech when he said that the change of conditions for Palestinian prisoners was directly related to the conditions in which Mr Shalit was being kept. And the Complaints Director went on to say that while he recognised the complainant may have found the comparison to be insensitive, it seemed to him that this was an area of public debate in Israel and therefore a legitimate area for reporting.

The Complaints Director then considered that part of the report which said that few Palestinian families had never had a member in jail and quoted the claim by the curator of the museum that the total number of Palestinians imprisoned since the British Mandate was 800,000. He said the complainant claimed that this number was inconsistent with the 5,335 Palestinians currently held in Israeli prisons. The Complaints Director said the report referred not only to people currently in jail but to families who had ever had a member in jail.

As the period under consideration was from the British Mandate period (1923 – 1948), or at least from the beginning of the Israeli military occupation (1967) to the present, it seemed that these figures offered some evidence that a relatively high proportion of families would have had at least one member imprisoned at some stage.

Finally, he considered the complainant's point that the report lacked balance in that it uncritically considered the Israeli prison system from the perspective of a Palestinian prison museum and failed to note the system was "the best in the Middle East". The Complaints Director said he could not agree that the article simply endorsed the view of those on one side of the debate. He said the report acknowledged a range of views on the nature of conditions and that what was true for some prisoners might not be true for others. He did not believe that balance required the inclusion of an extra statement. The Complaints Director added that while Israeli prisons might compare favourably with others in the Middle East, it did not follow that they were above criticism.

Stage 3

The complainant raised the following grounds for his appeal to the Trust:

- the article gave the impression that the reporter "knew" the conditions under which Mr Shalit was being held, when in fact her report was based on general assumptions
- the reporting of the story was to some extent based on speculation – well-founded or not – about Mr Shalit's conditions of imprisonment
- the article could be read to suggest that the conditions of imprisonment of Mr Shalit and the Palestinian prisoners were comparable; the complainant maintained they were not
- the report accepted the claim that most Palestinian families would, at some stage, have had one of their number imprisoned; the complainant disputed this
- the complainant suggested the BBC is institutionally biased in favour of Palestinians and against Israel

- the article was insensitive to the possible impact of the story on Mr Shalit's family, friends and supporters
- a complaint about complaints handling at stage 2 was later dropped by the complainant.

3. Applicable Editorial Standards

The following sections of the 2010 Editorial Guidelines are applicable.

Section 3: Accuracy

3.1 Introduction

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

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

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

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

Where appropriate to the output, we should:

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

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

Section 4: Impartiality

Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services – television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go

further than that, applying due impartiality to all subjects. However, its requirements will 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 BBC Agreement forbids our output from expressing the opinion of the BBC on current affairs or matters of public policy, other than broadcasting or the provision of online services.

The external activities of staff, presenters and others who contribute to our output can also affect the BBC's reputation for impartiality. Consequently, this section should be read in conjunction with Section 15: Conflicts of Interest.

4.2.1 We must do all we can to ensure that 'controversial subjects' are treated with due impartiality in all our output.

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

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

4.2.4 We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.

4.2.5 We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

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, the ECU and BBC Online.

Point 1 – whether the reporter gave the false impression that she had knowledge of Mr Shalit's conditions of imprisonment when in fact her report was based on suppositions, albeit ones then commonly found in the public domain

The Committee noted the complainant's objection that the "facts" of Mr Shalit's detention were not supported and that, even though there is a caveat that the conditions were "assumed", this does not prevent false impressions being given. The Committee also noted the complainant's objection that, given the paucity of the facts of Mr Shalit's detention, it was not appropriate to speculate on Mr Shalit's conditions of detention.

The Committee noted the BBC's response said that the justification for assuming some knowledge of Mr Shalit's conditions of imprisonment was based on the following:

- the publicly and privately stated views of his family. Mr Shalit's father said, on camera, "It's very difficult and we're worried about his health – his mental health, his physical health. For so many years this young man has been in total isolation." Off-camera he told the reporter that his comments were not simply his "expressions of anxiety and fears" for his son, but conclusions he had drawn from the limited communications he had had from him, and what he had been advised to prepare for by Israeli officials and experts
- the description by the Israeli Prime Minister that Mr Shalit's conditions were "harsh"
- recordings and letters sent by Mr Shalit in which he had indicated that he was in need of medical attention
- a video released by Hamas showing Mr Shalit in a bare room
- a Hamas cartoon in which Mr Shalit was portrayed as being chained to a wall in a prison cell
- a story run by the Israeli government-run television Channel 2, in which a Hamas source is quoted as saying that Mr Shalit was being held in a "two-room underground store with enough supplies to last two weeks, accessible only down a ladder through a 15-meter deep shaft."

The Committee noted the key point in the BBC's view, namely that the reporter made it clear that she was describing the "assumed conditions" of Mr Shalit's imprisonment and that she had reasonable grounds for making such assumptions.

The Committee noted the three specific references in the article to Mr Shalit's assumed conditions of imprisonment:

- The first being a direct quote from Israeli Prime Minister Netanyahu in which he refers to the fact that Hamas has refused to allow the Red Cross to have access to Mr Shalit.
- The second written by the reporter: "Supporters of Staff Sgt. Shalit point to the fact that he is denied basic human rights by his captors in Gaza".
- The third, also in the reporter's script, follows a description of some of the hardships that it is claimed that Palestinian prisoners suffer in Israeli prisons (sourced to "rights groups") which include being held in conditions where "detainees have no access to lawyers and are harshly treated ... in isolation in tiny windowless cells with poor hygiene", the reporter then adds "such conditions are similar to those in which Gilad Shalit is assumed to be held".

The Committee noted that the direct quote from the Israeli Prime Minister is a statement of uncontested fact and cannot be considered as a potential breach.

The Committee noted the second reference was based on the known fact that Hamas had denied the International Committee of the Red Cross access to Mr Shalit, and also on claims about his treatment made by the Israeli Government and Mr Shalit's campaigners in Israel and internationally about what they assumed to be the conditions of Mr Shalit's imprisonment.

The Committee noted the third reference was based on the claims of human rights campaigners in Israel and the Palestinian territories about the conditions in which some

Palestinian detainees were held. The specific allegation in the article, that some Palestinian detainees are given no access to lawyers and are being held “in isolation in tiny windowless cells with poor hygiene”, could be sourced to a recent report (funded by the European Commission) written by Israeli human rights groups, B’Tselem and HaMoked which was based on interviews with Palestinian detainees held at an interrogation centre in Israel.¹ The Committee noted that both groups have reputations for reliability among journalists familiar with the Middle East. The Committee, having taken into account the BBC’s response, agreed that the reporter had sound sources for stating that it was assumed that Mr Shalit had also been held in similar conditions, that is: harshly treated; without access to lawyers; in isolation; without windows and with poor hygiene.

The Committee decided it was clear the description of the conditions of Mr Shalit’s incarceration were reported in the article as assumptions, not proven fact. The Committee further decided that the assumptions which were made in the article fulfilled the guideline requirements which require that output be well sourced, based on sound evidence and presented in clear precise language. Accordingly the Committee did not uphold the complaint on this point.

Point 2 – whether the article could be read to suggest that the conditions of imprisonment of Mr Shalit and the Palestinian prisoners were comparable

The Committee noted the extract from the article relevant to this section of the complaint:

“It is difficult to draw an accurate general picture of how Palestinian detainees are treated by their Israeli jailors.

“Some of those convicted have similar living conditions to prisoners in Western countries, with limited access to television and exercise and occasional family visits. They can often obtain mobile phones through informal channels.

“But rights groups have also investigated certain interrogation centres where detainees have no access to lawyers and are harshly treated. They described them being held in isolation in tiny windowless cells with poor hygiene. Such conditions are similar to those in which Gilad Shalit is assumed to be kept.”

The Committee noted the complainant’s objection to the general comparison between Mr Shalit’s conditions and those of the Palestinian prisoners, that in his view the comparison was entirely inappropriate and that no objective comparison could be made, as Palestinian prisoners had not suffered a similar fate to Gilad Shalit. It also noted the complainant’s objection that Mr Netanyahu’s speech could not be used as a justification since the Israeli PM had made no comparison between the treatment being given to Palestinian prisoners in Israel and the presumed conditions of Mr Shalit’s imprisonment.

The Committee noted the relevant extracts from Mr Netanyahu’s speech:

“Today, Hamas announced that it continues to stand by its policy and refused the request of the Red Cross to visit Gilad. So I have an announcement: I have decided to change Israel’s policy vis-a-vis the terrorists sitting in Israeli prisons.”

The Committee noted the complainant’s view that, “Netanyahu did not come close to stating that Palestinian prisoners were being treated in the same way as Shalit,” and that

¹ http://www.btselem.org/publications/summaries/201010_kept_in_the_dark

therefore such a comparison was inappropriate. The Committee noted the complainant's additional point:

"Your report suggests detention centres 'where detainees have no access to a lawyer' and prisoners are 'held in isolation in tiny windowless cells with poor hygiene'. For how long before they enter the official jail system? A week? A month? Not four years! No objective comparison."

The Committee also noted the complainant's point that the article did not only suggest that the conditions were comparable, it explicitly equated the conditions in the sentence: "Such conditions are similar to those in which Gilad Shalit is assumed to be kept."

The Committee noted that at an earlier stage in the complaints process the BBC Online Middle East Editor accepted the complainant's contention that there was "no objective comparison" between the two but contended that the report did not equate or compare the conditions of Mr Shalit's imprisonment and those of the Palestinians held in Israeli prisons, it simply reported the points being made by the two sides.

The Committee noted the BBC's view that linking the two conditions of imprisonment, as the Israeli Prime Minister had done, did not imply they were comparable or could be equated. It further noted the BBC's argument that such linkages were frequently made, not just by the Israeli Government, but by the Israeli and international media, as well as by pro-Shalit campaigners.

The Committee decided it was editorially justified for the reporter to report on this issue and to frame the story in the way she did: in his speech Mr Netanyahu had linked Mr Shalit's plight with terrorists in Israeli prisons. As a result it had become a media story and a legitimate line of inquiry for the article. The Committee decided that in setting the issue of Gilad Shalit alongside that of Palestinian prisoners in Israel the article did not suggest the two were equivalent. The Committee did not believe the reader would be left with the impression that there was no difference between the treatment or the circumstances of the two. Accordingly, the Committee did not uphold the complaint on this point.

Point 3 – whether the article wrongly accepted the claim that most Palestinian families would, at some stage, have had one of their number imprisoned

The Committee noted the relevant extracts from the article:

"Exhibits at the site, in the West Bank town of Abu Dis near Jerusalem, tell the stories of Palestinian political prisoners from the British Mandate period to modern-day Israel."

"'It was important to establish this museum. Prison is a crucial part of the Palestinian struggle,' says curator, Fahid Abu al-Haj. 'The museum contains the suffering of more than 800,000 prisoners'.

"The number is hard to verify, but few Palestinian families have never had a member in jail.

"The latest figures suggest there are 5,335 Palestinians in Israeli prisons for security or public order reasons, including 211 children. Some have been convicted of murder but others are detained and tried for political activities."

The Committee noted the complainant's assertion challenging the statement in the article that "few Palestinian families have never had a member in jail". The Committee noted that in the complainant's view it was "a hyperbolic and inflammatory accusation sustained

only by its vagueness and dispelled in the cold light of real facts". It also noted the complainant's complaint that: the article implied there was an ongoing issue around rates of imprisonment; the most obvious measure of rate of imprisonments is rates of imprisonment per head; and in the UK more people per head are locked up by their own government than Palestinians by Israelis. The Committee noted the complainant's calculation that 0.13% of the current Palestinian population was in prison. It noted too the complainant's distinction between Palestinians imprisoned after being convicted by Israeli courts and those detained without trial under administrative detention orders.

The Committee noted the complainant's acceptance that, because of large family sizes, and the fact that the Palestinian/Israeli conflict has been going on for many years, "It is probably true to state that a relatively high proportion of the Palestinian population has been held at some point or other in custody by the Israelis." It noted too the complainant's comment that while it is difficult to test the accuracy of the assertion, his objection was that the figure appeared "to have been cherry picked to place Israel in a bad light". The Committee noted the reporter's response, that, because in a previous paragraph she had referred to the museum as telling "the stories of Palestinian political prisoners from the British Mandate period to modern-day Israel", she believed it was clear that the 800,000 figure refers to this much longer time frame.

The Committee noted that the 2009 United Nations Fact Finding Mission on the Gaza Conflict, known as the Goldstone Report, stated that since the beginning of the occupation in 1967, approximately 700,000 Palestinian men, women and children had been detained by Israel.²

The Committee noted that B'Tselem - the Israeli Information Centre for Human Rights in the Occupied Territories - quotes figures from the Israeli Prison Service that indicate that as of August 2011 there were 5,204 Palestinian prisoners held by Israel of whom 4,164 were serving sentences and the remainder were either being held under administrative detention or awaiting trial.³

The Committee considered that the 0.13% figure cited by the complainant was not relevant to the consideration of this aspect of the complaint. It represented convicted prisoners for the year of 2011 only and in any event its number equivalent was reported in the article correctly as 5,335 (which equates to about 0.13% of the current Palestinian population).

The Committee was satisfied that the reference to 800,000 prisoners in the article was duly accurate: the reporter sourced the quote to the museum curator and qualified the figures by stating that it was difficult to verify claims. And it was clear in the article that the figure of 800,000 was over an extended period, and did not represent the current prison population. In addition there was a sound basis for reporting the figures as they could be independently corroborated from a number of other sources.

In relation to the statement that "few Palestinian families have never had a member in jail", the Committee decided that the article observed due accuracy. The Committee considered the reader would understand the phrase was an acknowledgement of the longevity of a conflict which stretches back generations. The Committee concluded it was reasonable phrasing to express how the detention of Palestinians over the years (including those who have been detained after being convicted by Israeli courts and those detained without trial under administrative detention orders) had affected virtually every Palestinian family. It also accurately reflected the continued symbolic importance of the Palestinian prisoner issue.

² <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>

³ http://www.btselem.org/statistics/detainees_and_prisoners

This aspect of the complaint was not upheld.

Point 4 – regarding the allegation that the complainant suggested the BBC is institutionally biased in favour of Palestinians and against Israel

The Committee noted the complainant's assertion that there is an anti-Israel bias within the BBC:

"It is inevitable that BBC reporters will tend to have more sympathy with the Arab analysis of the Palestinian conflict than the Israeli one."

The Committee noted the complainant's view that the alleged BBC bias manifests itself in the choice of stories and the way those stories are reported, and that it is the result of:

- the "influence of BBC World Arabic Service"
- "the liberal backgrounds of many journalists"
- "force of numbers (the fact there are many more Arabs than Israelis!)"
- links with the UK government ("as well as the old colonial resentments at the Jewish terrorists who attacked British soldiers in the late 40s, there is far more present day UK national interest in good relationships with Arab countries than with Israel").

The Committee noted the complainant's view that the BBC should restrict itself to reports on events and facts and not on the reporter's own opinions.

The Committee agreed that the complainant had made a general assertion of institutional bias but had not sought to provide any evidence in support of this assertion except in relation to the "Heated debate over Palestinian prisoners in Israel" article. The Committee noted that it had already agreed there was no evidence in the article of any BBC bias and it agreed that there was therefore no case to answer in respect of the institutional bias complaint. The Committee also noted that its decisions on the previous points notwithstanding, an uphold on a failure to achieve impartiality with regard to a single article would not be sufficient grounds on which to justify an investigation into the BBC's impartiality.

The Committee noted that the complaint had pointed out that his complaints about articles on the Middle East had been met with "institutionalised contempt and obfuscation" during the complaints process. The Committee agreed that, whilst it was sorry for any delays the complainant may have experienced, it had not seen any evidence to suggest that these delays were the result of institutional bias.

This aspect of the complaint was not upheld.

Point 5 – regarding the allegation that the article was insensitive to the possible impact of the story on Mr Shalit's family, friends and supporters

The Committee noted the complainant's assertion that in making the comparison, implied or otherwise, between Mr Shalit and the Palestinian prisoners, the BBC was insensitive and would have offended Mr Shalit's family, friends and supporters:

"Mr Shalit's plight is a live issue in Israel – because people who genuinely care for his welfare are trying to bring him home. That doesn't entitle the BBC to use his

case as a political football to argue on substantively unrelated matters such as Hamas prisoner conditions.”

The Committee decided the BBC had exercised the editorial freedom provided for in the guideline on Impartiality, which endorses programme makers rights to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so. The BBC had demonstrated ample editorial justification for framing the article in the way it did, and had also shown in its response to the previous points that the article was duly accurate and duly impartial. Accordingly, the Committee did not uphold the complaint in this regard.

Overall the Committee was satisfied that the article met the guideline requirements of due accuracy and due impartiality.

Finding: Not upheld

Newsnight Scotland, BBC Scotland, 1 July 2010

1. Background

Newsnight Scotland is a twenty minute programme on air at 23.00 Monday to Thursday in Scotland. It looks in depth at topical news and currents affairs from the Scottish perspective. The programme broadcast on Thursday 1 July 2010 included an exclusive report by BBC Scotland's Investigations Correspondent which examined evidence of a personal relationship between a Councillor and a property developer. The report posed the question as to whether their relationship had any bearing on planning decisions taken at committees on which the Councillor was a member and which involved the developer. The report, filmed on location, was followed by a two-way in the studio between the presenter and the correspondent.

2. The complaint

Stage 1

This is a first party complaint brought on behalf of the Council concerned. The complainant wrote to the BBC about three separate broadcasts of a report by BBC Scotland's Investigations Correspondent. Two were shown in *Reporting Scotland* on BBC One at 18.30 and 22.30 and the third was shown in *Newsnight Scotland* on BBC Two at 23.00. The *Newsnight* report included additional material to that broadcast in the two reports shown in *Reporting Scotland*. It is part of this additional material which is the subject of this appeal, namely the report's reference to the purchase of green belt land by a developer in July 2001 and its subsequent rezoning for housing.

The complainant detailed five separate heads of complaint about the report:

- The studio introduction was misleading and damaging to the Council's reputation because it gave an impression of impropriety regarding reports prepared by officers of the Council's planning department and that the planning department and/or its officers were involved in wrongdoing.
- It created the misleading impression that the Council was the vendor of 67 hectares of green belt land on the outskirts of East Kilbride sold to a developer in July 2001.
- It created the misleading impression that, having sold the land to the developer, the Council almost immediately rezoned it for housing and so helped the developer to realise a substantial profit when he sold it on.
- It was unfair to the Council and created a perception of impropriety and wrongdoing when it gave the misleading impression that the Council paid the developer £5 million for a housing development project when the project was in fact a joint initiative with a Housing Association and approved by the Scottish Government which part funded the project.
- The inaccurate and unfair impression created by the statement that the developer is one of the Council's biggest clients and that "last year (2009) the Council paid him more than five million pounds for a housing development" was reinforced by the use of a quote attributed to an MSP calling for transparency and openness from the Council, the Councillor concerned and the Labour Party.

By the end of Stage 1 BBC Scotland's Head of Public Policy and Corporate Affairs had replied to the complainant, incorporating a response from the Editor, Investigations. He said:

- The BBC did not agree that viewers would interpret the statement "A BBC investigation into the planning department of [the] Council..." in the way articulated by the complainant. He said the individual people who were subject to the investigation were clearly identified throughout the piece.
- The BBC never stated that the land on the outskirts of East Kilbride was sold by the Council, nor did he believe the report gave that impression.
- The BBC did not accept that the report gave a false impression or made any factual errors regarding the rezoning of the land.
- The complainant was correct in saying that the BBC did not state that the Housing Association was involved in a housing development. This was because the BBC did not believe the involvement of other parties materially changed the central investigation into the relationship between the developer and the Councillor.
- The BBC did not accept the central allegation of the complaint that it distorted any facts, ignored the truth or misled the audience.

Stage 2

The complainant wrote to the ECU and said viewers were misled by the BBC report as evidenced by coverage it obtained in a local paper. The complainant accepted that the BBC could not be held responsible for the journalism of third parties and noted that a local paper had acknowledged that a mistake in its report was not influenced by the content of the BBC programme.

The complainant said the report gave a false impression by suggesting the Council initiated the rezoning of the green belt land within three months of it being sold to the developer. The complainant pointed out that the Council opposed the proposed rezoning.

The complainant said the BBC Scotland report distorted facts, ignored the truth and that the reporter failed to check facts - all of which misled the audience and impugned both the Council and its officers' reputation.

At the end of Stage 2 the ECU informed the complainant that it had upheld two of the five aspects of the complaint.

The ECU said the programme-makers had re-assessed the wording of the introduction to the report - "A BBC investigation into the Planning Department of [the] Council..." and accepted that it would have been more accurate to refer to "planning decisions at [the] Council". The ECU said that as the phrase used implicated the Council's Planning Department in concerns which applied to other parties, it was inaccurate and unfair. It upheld this aspect of the complaint.

The ECU said it could not find any suggestion that the developer purchased 67 hectares of green belt land on the outskirts of East Kilbride from the Council. It noted that the local paper claimed to have taken that understanding from the BBC's report and repeated it in its own report but the ECU did not think such a meaning could reasonably be derived from the words used. It did not uphold this aspect of the complaint.

The ECU agreed that the way the report dealt with the rezoning of the green belt land for housing gave a misleading impression that the Council may have been involved in a decision which would have helped the developer make a substantial profit from his land purchase without any compelling evidence that this may have been the case. It noted how the complainant explained that the Council wanted to preserve the land as green belt and that the decision to re-designate resulted from a planning inquiry and not from any deliberative process by the Council. It also noted that although the Council's Executive

Director of Enterprise Resources supported a planning application in 2005 that fact did not provide any evidence that the Council supported rezoning four years earlier. It upheld this part of the complaint.

The ECU did not agree that the report gave the misleading impression that the Council had paid the developer £5 million for a housing development project when the project was a joint initiative with a Housing Association and approved by the Scottish Government which part funded the project. It said the figure illustrated the uncontested statement that the Council is one of the developer's biggest clients. It did not uphold this part of the complaint.

The ECU said that reporting a call for transparency from all parties to resolve any questions arising from the investigation into the relationship between the Councillor and the developer did not give rise to unfairness to the Council. It did not uphold this part of the complaint.

The complainant responded to the ECU and asked it to reconsider its finding about the allegation that the report gave the impression that the land had been sold to the developer by the Council and to examine the linkage, language and context of the report in relation to this aspect of the complaint as well as to the two upheld aspects of the complaint.

The ECU replied to the complainant and said that in contrast with the two points of the complaint it upheld, which rested on the unarguable meaning conveyed by particular phrases in the report and the introduction to it, the focus of the not upheld part of the complaint was entirely on the planning decision in relation to the land in question. It was the Councillor's involvement in that planning process, rather than who may have sold the land to the developer that made the purchase and sale of the land of interest.

3. Appeal to the BBC Trust

The complainant appealed to the Editorial Standards Committee (ESC) and asked it to consider its allegation that the investigative report broadcast in the BBC Scotland *Newsnight* programme on 1 July 2010 created a misleading impression that the Council was the vendor of 67 hectares of green belt land on the outskirts of East Kilbride which was sold to a developer for £750,000 in July 2001.

The complainant said this aspect of the complaint was inextricably linked to two other aspects of the original complaint which were upheld by the ECU. Firstly that the wording of the introduction to the report - "A BBC investigation into the Planning Department of [the] Council..." was misleading and damaging to the reputation of the Council and secondly that the programme gave a misleading and unfair impression of the Council in relation to the rezoning of 67 hectares of green belt land on the outskirts of East Kilbride for housing.

The complainant alleged that the sentence construction used in the report demonstrated a move by the BBC to create a broadcast that gave a distinct impression that the Council sold the land in question to the developer and then almost immediately rezoned it for housing, and in doing so were implicit in the developer achieving "not a bad bit of business by anybody's standards".

The complainant also alleged that the impression created by the report - that the Council sold the land - was demonstrated in the way it was interpreted not only by local newspapers, but also by viewers of the report who subsequently wrote to local newspapers criticising the Council for selling the land, as well as those who contacted the Council directly in the belief that the Council had been involved in the "transaction[s]".

The complainant said that with regard to the part of the report concerning rezoning of the land, the BBC now accepted the report was inaccurate. The inaccuracy over the rezoning issue was such that, taking account of the BBC's acceptance of the "unfair and inaccurate" reference to the Planning Department, the ambiguous reference to the sale of the land only added to what was a flawed and biased broadcast.

4. Applicable Editorial Guidelines

The following section of the 2005 Editorial Guidelines is applicable

Section 3 – Accuracy

The BBC's commitment to accuracy is a core editorial value and fundamental to our reputation. Our output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve accuracy by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

We should not distort known facts, present invented material as fact, or knowingly do anything to mislead our audiences. We may need to label material to avoid doing so.

5. The Committee's decision

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

The Committee considered the appeal 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. The Committee noted that the *Newsnight* programme was broadcast in July 2010 before the most recent version of the BBC Editorial Guidelines took effect. It therefore considered the appeal against the 2005 version of the Guidelines which were applicable at the time. It noted that the appeal raised issues requiring consideration of the accuracy guidelines.

The Committee first considered the complainant's allegation that the *Newsnight* investigative report created a misleading impression that the Council was the vendor of 67 hectares of green belt land on the outskirts of East Kilbride which was sold to a developer for £750,000 in July 2001.

The Committee noted the transcript of the *Newsnight* report and in particular the section relating to this appeal:

BBC Investigative Correspondent:

"We can now reveal that [the Councillor] and [the developer] are in fact close friends and have been for many years. It was here at St Vincent's Parish Church in

East Kilbride that [the Councillor] had his daughter baptised. The ceremony took place in June last year and we can reveal that the man appointed as the child's godfather that day was [the developer].

Strachur, Loch Fyne, where [the developer] has two properties. The BBC has established that [the Councillor] is often here accompanying [the developer] on fishing trips. They are frequently seen eating and drinking together in the villages' two pubs. The Councillors' Code of Conduct states 'the key principle is the need for transparency in regard to any interest which might be objectively regarded by a member of the public as potentially affecting your responsibilities as a Councillor.' [The Councillor] has been involved in numerous successful planning applications submitted by [the developer], but has never declared an interest.

[The Councillor] has been a regular visitor to these beautiful shores of Loch Fyne staying at one of the properties of his friend, [the developer], or in the company of [the developer] himself. But given [the Councillor]'s longstanding and influential position on two of the Council's most important Committees, the constituents of [the Council] may feel entitled to ask one question. Did this relationship have any bearing whatsoever on the decisions involving [the developer] which were taken at those Committees?"

The Council's SNP Leader:

"The least that we could expect is that all these planning applications and the Estate Committee reports to be looked at again where [the developer] and [the Councillor] have been involved. And if these allegations are proved to be true, then the SNP Group will be calling for [the Councillor] to resign from the Council because I think his position is untenable now."

BBC Investigations Correspondent:

"One of the transactions the SNP may want examined is the purchase by [the developer] of this piece of land shaded green in July 2001. It's 67 hectares of green belt land on the outskirts of East Kilbride. He paid just over £750,000 for it. But just three months later, Council discussions began over plans to rezone the land for housing development meaning its value would rocket and in 2007 [the developer] sold it on to a developer, ..., for thirteen and a half million pounds. Not a bad bit of business by anybody's standards."

The Committee noted that this part of the report posed a question that was fundamental to the BBC's investigation into the relationship between the Councillor and a local developer. The BBC's Investigations Correspondent asked the following:

"Did this relationship have any bearing whatsoever on the decisions involving [the developer] which were taken at those Committees?"

The Committee noted the complainant's allegation that the sentence construction used in the report demonstrated a move to create a broadcast that gave a distinct impression that the Council sold the land in question to the developer and then almost immediately rezoned it for housing, and in doing so were implicit in the developer achieving "not a bad bit of business by anybody's standards."

The Committee also noted the complainant's allegations that the impression created by the *Newsnight* report that the Council was the vendor of the land was also demonstrated in the way the report was interpreted not only by local newspapers – but by viewers of the report who both wrote to local newspapers and contacted the Council directly

criticising it for selling the land in the belief that the Council had been involved in the “transaction[s]”.

The Committee noted the complainant had referred to a court case regarding a local newspaper article and letters, where the Sheriff had stated that the identity of the seller of the land is significant, and that the ordinary reader would be unlikely to make any distinction between the Planning Committee and the Council itself. The complainant stated that this confirmed its assertion that the BBC report regarding the sale of the land was, at best ambiguous, and could be interpreted as suggested by the Council. The Committee agreed that the court case, which concerned a newspaper article and letters, was not relevant to this appeal which concerned whether the BBC report had breached the Editorial Guidelines. It also agreed that any principles applied in that case regarding the meaning to be attributed to words, was not relevant to the Committee’s consideration of whether there had been a breach of the Editorial Guidelines.

The Committee noted the BBC had seen the Land Certificate which clearly documented the vendors and purchasers of the land in question; and that the complainant specifically asked why the BBC had not made it clear in its report that the sale of the land was between two private individuals and did not involve the Council in any way.

The Committee noted the BBC’s response to the complainant’s allegations. The BBC said it was aware of the circumstances of the transaction because it had read the Land Certificate which had been supplied by the Council. It also said that it did not suggest or imply that the land was purchased from the Council. It explained that concerns had been raised to the BBC because discussions about rezoning the land began at a public inquiry soon after the developer’s purchase of the land. It added that the land was eventually rezoned and the developer sold it on for £13.5 million. The BBC said it did not suggest the Council was complicit in any way but pointed out that its investigations had established that the developer had/has close ties with elected members of the Council and the matter may need investigating.

The Committee noted the ECU’s findings that it was the Councillor’s involvement in the planning process that made the purchase and sale of the land of interest, rather than who may have sold the land to the developer; that the ECU was unable to find any suggestion that the developer purchased 67 hectares of green belt land on the outskirts of East Kilbride from the Council; and that the ECU noted the local newspaper claimed to have taken that understanding from the BBC’s report and repeated it in its own report but that it did not think such a meaning could reasonably be derived from the words used.

The Committee concluded that it did not agree with the complainant that the investigative report broadcast in the BBC Scotland *Newsnight* programme on 1 July 2010 created a misleading impression that the Council was the vendor of 67 hectares of green belt land on the outskirts of East Kilbride which was sold to the developer for £750,000 in July 2001.

The Committee agreed that there was no ambiguity in the wording of this part of the report and that it had been presented in clear, precise language. It also agreed that the graphics used to illustrate it visually, which consisted of maps and plans indicating the location and extent of the land as well as figures detailing the price the developer paid for the land and the price he secured for it when he sold it on, did not give any impression whatsoever that it was the Council who had sold the land to the developer in 2001.

The Committee noted that it was concerned with the impression gained from BBC output, and not from the journalism of third parties. It also noted that the BBC could not be held responsible for the journalism of third parties and that the local newspaper had later stated that its report was mistaken but that this mistake was not influenced by the BBC

programme. The Committee noted that the editor of the local newspaper had confirmed in an email to the BBC that the mistake regarding the sale of the land was not influenced by the content of the BBC programme. The Committee also noted that the reporter has said in an email to the BBC that:

“Nowhere in the BBC report does it suggest [the developer] had purchased the land from [the] Council. It would be completely unjustified to apportion blame to the BBC for what was subsequently published in the [local newspaper].”

The Committee concluded that the report was factually accurate when it said: “One of the transactions the SNP may want examined is the purchase by [the developer] of this piece of land shaded green in July 2001. It’s 67 hectares of green belt land on the outskirts of East Kilbride. He paid just over £750,000 for it. But just three months later, Council discussions began over plans to rezone the land for housing development meaning its value would rocket and in 2007 [the developer] sold it on to a developer, ... , for thirteen and a half million pounds. Not a bad bit of business by anybody’s standards.”

The Committee agreed that there had not been any breach of the Editorial Guidelines on accuracy.

Secondly the Committee considered the complainant’s allegation that two other aspects of the complaint upheld by the ECU in June 2011 were inextricably linked with the aspect of the appeal above that it had agreed did not breach any accuracy guidelines. It noted the complainant said because the ECU had found the report gave a misleading impression with regard to the part about the rezoning of the land and was unfair and inaccurate in the way it had referred to the Planning Department in the introduction, these two aspects of the complaint taken together with its allegation about what it described as “the ambiguous reference to the sale of the land” only added to what the complainant said was a flawed and biased broadcast.

The Committee noted that the ECU had upheld two of the original five aspects of the complaint. In relation to the first one the ECU said use of the phrase “A BBC investigation into the Planning Department of [the Council]...” implicated the Council’s Planning Department in concerns which applied to other parties and that was inaccurate and unfair. In relation to the second one the ECU said the part of the report that dealt with the rezoning of the green belt land for housing was misleading. It gave the misleading impression that the Council may have been involved in a decision which would have helped the developer to make a substantial profit from his land purchase without any compelling evidence that this may have been the case.

The Committee agreed that it endorsed the ECU’s upheld findings at Stage 2 of the complaints process. It also noted that the ECU said that in contrast with these two upheld points of the complaint, which rested on meanings which were unarguably conveyed by particular phrases in the report and the introduction to it, the focus of this aspect of the complaint was entirely on the planning decision in relation to the land in question. It was the Councillor’s involvement in that planning process, rather than who may have sold the land to the developer that made the purchase and sale of the land of interest. The Committee agreed with the ECU and concluded that the two ECU upheld points of the complaint and the point of the complaint subject to this appeal were not inextricably linked with, and therefore did not impact on, its decision not to uphold the accuracy complaint which alleged the *Newsnight* report created a misleading impression that the Council was the vendor of 67 hectares of green belt land on the outskirts of East Kilbride which was sold to the developer for £750,000 in July 2001.

The Committee agreed that the *Newsnight* investigative report into the personal relationship between the Councillor and the developer and the question the report posed

about whether their relationship had any bearing on planning decisions taken at committees on which the Councillor was a member and which involved the developer were perfectly legitimate stories in the public interest to bring to the attention of BBC viewers in Scotland.

The Committee concluded that, in relation to the points of appeal, the BBC had not distorted known facts, presented invented material as fact or otherwise undermined the audience's trust in the BBC's content which was the subject of this appeal and had therefore not breached the BBC's Editorial Guidelines on accuracy.

Finding: Not upheld

Secret Iraq, BBC Two, 6 October 2010

Secret Iraq, BBC Two, 6 October 2010

1. Background

Secret Iraq was described by the BBC pre-broadcast publicity as 'a landmark two-part documentary series that sheds new light on the dramatic story of Iraq after the fall of Saddam'. It was broadcast on BBC 2 over two weeks. Part one, Secret Iraq – Insurgency, was broadcast on 29 September 2010 and part two, Secret Iraq – Awakening was broadcast on 6 October 2010.

The complainant said that the second programme presented a one-sided, highly critical account of the coalition strategy post invasion and that interviews with those supporting the coalition strategy were insufficient to redress the balance.

2. The Complaint

Stage 1

The complainant first contacted BBC Audience Services on 7 October 2010. He said that *Secret Iraq* presented:

"a one-sided, highly critical account of the coalition strategy in the post-invasion period (particularly in the UK's role in Basra) and was therefore in breach of editorial guidelines regarding the need for even handedness and impartiality".

BBC Audience Services replied to the complainant on 17 October 2010. They noted that when dealing with controversial matters, the BBC is required to give a fair and balanced report. BBC Audience Services noted that the issue of balance could not be judged on the basis of time allocated to the representatives of either side of an argument. They said that as a public service broadcaster, the BBC has an obligation to report on all the various views and opinions on the Iraq war in order to maintain the BBC's impartiality.

The complainant wrote to the Editorial Complaints Unit (ECU) on 18 October 2010.

On 1 December 2010, the Complaints Adviser for News and Current Affairs, BBC Audience Services, replied to the complainant. He stated that the complainant was correct to point out that the BBC strives for due impartiality across its programmes over time. He stated that he felt that the series achieved this level of impartiality on an individual-episode basis.

BBC Audience Services noted that in both episodes:

"we heard from high ranking generals, diplomats, spies, insurgents and militants who recounted their experiences of an Iraq that often bore little relationship to the country being portrayed by the politicians".

BBC Audience Services said these were important and pertinent perspectives from people involved in the conflict, and that the programme had included contributions from members of the British Armed Forces with regards to the programme's analysis of the situation in Basra.

BBC Audience Services stated:

"We did not seek to broadcast an overtly positive or negative examination of pre/post invasion Iraq. We simply sought to fairly, accurately and clearly explore

the complex military, political and religious factors that contributed to one of the most destructive conflicts in recent history”.

In conclusion BBC Audience Services noted:

“We felt that this was achieved by supplementing our analysis with the contributions mentioned above and by exploring in detail the plethora of developments and intricacies this conflict entailed”.

The complaint was not upheld.

Stage 2

On 1 December 2010 the complainant wrote to the Complaints Manager, ECU. He stated that he had now received a response from BBC Audience Services and that he considered it to be unsatisfactory.

The complainant noted that Audience Services had stated in their response that the picture painted:

“bore little relationship to the country being portrayed by the politicians”

The complainant stated that in itself this was confirmation that the programme presented only one side of the story and noted that:

“the politicians have another side to this story and therefore in accordance with your rules should have been given or should be given the chance to put their views on this matter”.

The complainant requested that the ECU now review his complaint.

On 14 December 2010 the ECU wrote to the complainant. They noted that the ECU could take on the complaint on the general point that in the complainant’s view, the programme presented a one-sided and highly critical account of the post-invasion coalition strategy in Iraq (particularly that of the UK).

On 10 January 2011 the complainant wrote to the ECU requesting that the investigation encompass the specific point he had made in response to a reply from Audience Services, that is that in his view:

“Audience Services admitted that the picture painted [by the programme] ‘bore little relationship to the country being portrayed by the politicians’ which in itself is confirmation that the programme presented only one side of the story. The politicians obviously have another side to this story and therefore in accordance with your rules should have been given or should be given the chance to put their views on the matter”.

The complainant stated that:

“if the one-sided treatment of this issue is to be defended on the basis of balance being achieved over time I would like to have some idea of when a proportionate balancing programme is scheduled to appear (bearing in mind that this should be done within a reasonably short time under the rules)”.

On 14 February 2011, the ECU wrote to the complainant. They summarised the complaint and set out the BBC’s Guidelines on Impartiality.

The ECU stated that at the beginning of the programme its ‘stall’ was very clearly set out:

“...Above all this is the story not of an Iraq portrayed by the politicians, but the real Iraq, experienced by those at the heart of the struggle”.

The ECU felt that the programme had made its position clear at the outset and that the statement by the programme more than met the requirement that there should be editorial justification for examining an issue from a particular perspective.

The ECU noted that there were two major strategic issues considered by the programme to which the concerns raised might apply. Firstly, the nature and success of the coalition's initial strategic approach to managing Iraq's future immediately after the invasion. The ECU noted how this had been described by General Jack Keane as a strategy:

"...to transition to the Iraqi security forces as quickly as possible. The major vulnerability of that strategy was nowhere in there was there a plan to protect the population. We made a conscious decision not to protect the population".

General Keane, and others, described how this policy was, in their view, failing and how they took the matter to the White House for consideration by President Bush. The President subsequently announced that the USA:

"...will change our strategy to help Iraqis carry out their campaign to put down sectarian violence and bring security to the people of Baghdad".

Two of the witnesses interviewed in relation to this development described the countervailing view taken by some in the military and the Pentagon. That view was summed up by Meghan O'Sullivan, who had attended some of the meetings in the White House where it was discussed:

"...you had many people, particularly on the military and the Pentagon side who felt that again the biggest problem in Iraq was that Iraqis were reacting to a foreign occupation. If you thought that was the biggest problem then the obvious prescription is to have fewer troops not more".

Eliot Cohen, a special adviser in the State Department, confirmed this account.

The ECU noted that, the Guidelines do not require programme makers to cover every side of an argument on every occasion that it might be considered:

"It is important...in the interests of accuracy, that even if an opposing view is not explored, the impression should not be given that one particular view is non-controversial where this is not the case".

The ECU referenced the description of the debate which occurred in the White House and noted that the viewer is not left in any doubt that the particular policy decision taken was opposed in some quarters where the view held that the end of the civil war in Iraq would be best served by a quicker departure rather than a reinforced presence.

The ECU stated:

"...the programme made perfectly clear that events would be seen from the perspective of those on the ground while those events were unfolding, that this was editorially justified and the existence of an alternative view was properly acknowledged".

The ECU noted that there is no guideline requirement upon programme-makers to represent every facet of an argument on every occasion. Nor is there a particular requirement that any programme which focuses upon a particular perspective must be balanced by another programme representing the alternative view(s).

The ECU then focussed on the second strategic issue to which the complaint might apply, that of the UK's role in Basra after the occupation in Iraq. They noted that the Guidelines did not prohibit the programme makers from focussing on the views and testimony of

senior military officials who had charge of the British troops in Basra at the time. The ECU stated that there was no requirement that the programme makers should also explore the views of the politicians who might have a different perspective on the campaign in Basra, however that there was a requirement to avoid representing the military view as unchallenged and non-controversial where this is not so. The ECU stated:

“This was achieved...through the inclusion of the clip of an interview with Tony Blair on the Andrew Marr Show where he described the British operation in Basra as a success”.

The complaint was not upheld.

On 17 February 2011 the complainant wrote to the ECU stating that their response of 14 February was unsatisfactory:

“because it does not relate to the part of the Editorial Guidelines on impartiality which applies to this programme, namely the part covering ‘controversial subjects’ and ‘major matters’”

The complainant referenced the Guidelines on ‘controversial subjects’ published on 18 October 2010 and noted that Iraq was ‘controversial (if not highly controversial)’ and that the controversy was active given that the Iraq inquiry was running at the time the programme was broadcast. The complainant also noted that ‘a decisive moment in the controversy is expected (given that the Iraq inquiry is due to announce its findings in the next few months)’. The complainant stated:

“...a wide range of significant views and perspectives should have been given due weight in the programme, and should certainly have included with due weight the views of those politicians who took a different view (not just a brief clip of Tony Blair which was clearly inserted to point up the contrast between what he was saying and how the situation was depicted in the programme)”.

On 23 March 2011 the ECU wrote to the complainant. They stated that the guidelines which the complainant had referenced in his email of 17 February 2011 came into force on 18 October 2011, after the programme had been broadcast. The ECU stated that the complaint could only be considered against the Guidelines in force at the time the programme was broadcast. They noted the Guidelines concerning ‘controversial subjects’ which were in force at the time of the broadcast.

The ECU noted that:

“...this section of the Guidelines is intended to refer to the BBC’s overall coverage of particular subjects and not to particular programmes...it is not intended to be a yardstick by which individual programmes are judged”.

The ECU concluded that as a standalone programme it did not fall foul of the Guidelines for the reasons previously set out.

On 24 March 2011 the complainant wrote to The ECU noting that he had made previous complaints to the BBC on controversial issues and that this was the first occasion on which he had been told that his complaint should have related to the overall coverage of an issue for it to be considered under the related BBC rules. The complainant noted that this was clarified in the new rules and that the old rules should have been interpreted accordingly.

On 24 March 2011 the ECU wrote to the complainant clarifying that in their response of 23 March 2011, they had pointed out:

"...that the Guidelines on 'Controversial Subjects'...applied to overall coverage of a subject rather than to particular programmes. As your complaint was directed at a particular programme I could not agree that this Guidelines applied".

The complaint was not upheld.

Appeal to the BBC Trust

On 25 March 2011 the complainant wrote to the Complaints Adviser, BBC Trust. The complainant stated that his appeal concerned the programme 'Secret Iraq' which in his view presented a 'negative, one-sided account of the way the post-invasion situation in Iraq was handled by the Coalition', and that in his view the programme breached the BBC's impartiality rules.

The complainant noted in particular the response received from the ECU on 23 March 2011 that in his view had seemed to indicate that:

"...that the old rules related to the overall coverage of a controversial issue not to a single programme putting a particular perspective on that issue".

The complainant noted that he had made previous complaints about programmes putting one side of the story on controversial subjects and that these had previously been addressed either on the basis that the programme did reflect the conflicting views or that balance on the topic was achieved in other related programmes over time. The complainant noted that this was the first time that he had been advised that a complaint should relate to the overall coverage of an issue for it to be considered under the rules relating to controversial subjects.

The complainant noted that his interpretation of the Guidelines relating to controversial subjects, particularly the new Guidelines, do tighten up what programme makers can do where a matter is particularly controversial. The complainant stated that if the old rules did not make this clear enough then they should have been interpreted in light of the more explicit wording of the new rules.

The complainant raised the following points in relation to the impartiality of this programme:

Point (1) that the programme was not impartial because it presented only one side of the story.

Point (2) that the inclusion of the interviews with those who supported the coalition strategy, most notably the interview with Tony Blair on the Andrew Marr Show, were insufficient to redress the balance of the programme and were included to support what the complainant alleges was the overall negative stance of the programme.

3. Applicable Editorial Guidelines

The following editorial guidelines are applicable to this case (Editorial Guidelines 2005 - 2010):

Impartiality

Impartiality lies at the heart of the BBC's commitment to its audiences...

The Agreement accompanying the BBC's Charter requires us to produce comprehensive, authoritative and impartial coverage of news and current affairs in the UK and throughout the world to support fair and informed debate. It specifies that we should do all we can to treat controversial subjects with due accuracy and impartiality in our news services and

other programmes dealing with matters of public policy or of political or industrial controversy...

...we must ensure we avoid bias or an imbalance of views on controversial subjects....

Achieving impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted.

Impartiality is described in the Agreement as 'due impartiality'. It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

"Controversial Subjects"

In the United Kingdom controversial subjects are issues of significance for the whole of the country, such as elections, or highly contentious new legislation on the eve of a crucial Commons vote, or a UK wide public sector strike.

In the nations and regions of the UK, controversial subjects are those which have considerable impact on the nation or region. They include political or industrial issues or events which are the subject of intense debate or relate to a policy under discussion or already decided by local government.

In the global context, some controversial subjects such as national elections or referendums will obviously have varying degrees of global significance but will be of great sensitivity in the country or region in which they are taking place. We should always remember that much of the BBC's output is now available in most countries across the world.

We must ensure that a wide range of significant views and perspectives are given due weight in the period during which the controversial subject is active. Opinion should be clearly distinguished from fact. When the issues involved are highly controversial and/or a decisive moment in the controversy is expected we will sometimes need to ensure that all of the main views are reflected in our output. This may mean featuring them in a single programme, or even a single item.

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.

The Committee agreed that it was appropriate to consider the matter with regard to the 2005-2010 Editorial Guidelines and not to retrospectively apply the new version of the Editorial Guidelines, published after the programmes in question had been broadcast.

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.

This appeal raised issues requiring consideration of the Editorial Guidelines on Impartiality including those on 'Controversial Subjects' and whether or not they had been followed in this instance.

The Committee first considered this appeal at its meeting in July 2011. On receipt of the draft finding the complainant raised an error of fact relating to whether "a decisive moment in the controversy" was expected. As an exception to the usual process, the Committee reconsidered this aspect of the appeal at its January 2012 meeting and the finding was subsequently amended (see endnote).

Point 1

Allegation

The Committee understood that the complainant had said that the programme presented a one-sided, highly critical account of the coalition strategy post invasion and that interviews with those supporting the coalition strategy were insufficient to redress the balance.

The complainant had noted that the war in Iraq was "controversial (if not highly controversial)" and that the controversy was active given that the Iraq (Chilcot) inquiry was running at the time the programme was broadcast. The complainant also noted that 'a decisive moment in the controversy is expected (given that the Iraq inquiry is due to announce its findings in the next few months)'.

BBC response

The Committee noted that the ECU had responded to the complainant on this point, the summary of which is set out at Stage 2 above.

The Committee noted that the Executive Producer for the BBC, in conjunction with the Executive Producer for the programme production company and the Commissioner of Current Affairs for the BBC had responded to the issues raised by the complainant:

"BBC Current Affairs has a strong tradition of pursuing and recording eyewitness accounts of international events. We are often the first people to find these witnesses and encourage them to give testimony in the face of unwanted attention and personal danger. This testimony often proves controversial at the time but later comes to be accepted and quoted in historical record.

It is crucial that BBC Current Affairs continues to pursue this front line journalism without having to add political policy or opinions as experienced far from the events we are providing a direct account of.

As we have stated in previous submissions to the ECU the purpose of this series was not to investigate political positions or the political landscape of the time. It was about what actually happened on the ground as seen through the eyes of the individuals who were present when key decisions were taken and when key events unfolded.

The interviewees in this programme are direct witnesses to this first writing of the history of the Iraq War – these programmes were the first to weave together high level military voices and those of Iraqi insurgents many of whom had never previously been heard speaking about their experience of the conflict.

Throughout the production process we considered and adhered to BBC Editorial Guidelines and sought advice from BBC Editorial Policy. We strongly believe this series meets and indeed exceeds the highest BBC Editorial standards."

Consideration

The Committee noted the complainant's overall allegation that the programme presented a one-sided, highly critical account of the coalition strategy post invasion and that interviews with those supporting the coalition strategy were insufficient to redress the balance.

The Committee noted two key points within the complainant's allegation, firstly that the war in Iraq was "controversial (if not highly controversial)" and that the Iraq (Chilcot) inquiry was running at the time the programme was broadcast. The complainant also stated that "a decisive moment in the controversy is expected (given that the Iraq inquiry is due to announce its findings in the next few months)".

The Committee noted secondly the complainants' allegation that the inclusion of the interviews with those who supported the coalition strategy, most notably the interview with Tony Blair on the Andrew Marr Show, were insufficient to redress the balance of the programme and were included to support what the complainant alleged was the overall negative stance of the programme.

In its consideration of the first point, the Committee noted that the pre-broadcast publicity for Secret Iraq – The Awakening stated:

"The series has gained access to Iraqi insurgents, American and British soldiers, generals, diplomats and spies, who recount their experiences of an Iraq that often bore little relationship to the country being portrayed by the politicians. Senior US and British commanders give a blunt assessment of the performance of the overstretched British military, and fresh details of the secret deals the British struck with Iranian-backed militia groups to withdraw from Basra. The inhabitants of the city reveal details of the brutal militia rule that followed in that city".

"The film picks up the story of Iraq after Saddam in the third year of occupation. Evidence suggests that the coalition knew the Iraqi government and police force it had created were deeply involved in sectarian killing that cost tens of thousands of Sunni and Shia Iraqis their lives. A senior US commander reveals the secret report he wrote and describes the actions of Iraqi politicians as war crimes. Insurgents and others who were close to Al Qaeda explain how the organisation thrived in the chaos and soon controlled large swathes of Iraq".

The Committee noted the commentary in the opening scenes of the programme which set the scene and the stance taken by the programme:

Timecode 10.00.15 to 10.02.06

Footage of civil unrest / Footage of insurgents and attacks on American soldiers.

Commentator: In the opening episode of Secret Iraq – Iraqi fighters revealed how their hatred of Westerners sparked a lethal insurgency. For two years there were brutal battles and untold horrors. Yet the story of Iraq after Saddam – a story shrouded in deceit – was about to enter a more terrible phase. It was a time when Iraqis slaughtered Iraqis; when western forces struggled to avoid humiliating defeat.

It's a story of intrigue and revenge. A story of hidden alliances and secret deals with killers. Above all this is the story not of Iraq portrayed by the politicians, but the real Iraq, experienced by those at the heart of the struggle.

In reaching its decision, the Committee considered the clauses of the Impartiality guidelines covering "due impartiality". These require the BBC to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in its approach to a subject. The Committee noted that these Guidelines do not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

In addition, the Committee considered the clause within the Impartiality guidelines which relates to Controversial Subjects and which states:

"We must ensure that a wide range of significant views and perspectives are given due weight in the period during which the controversial subject is active. Opinion should be clearly distinguished from fact. When the issues involved are highly controversial and/or a decisive moment in the controversy is expected we will sometimes need to ensure that all of the main views are reflected in our output. This may mean featuring them in a single programme, or even a single item."

The Committee also noted the comments made by the ECU in respect of the application of the 'controversial subject' guidelines. In particular they noted that the ECU had advised the complainant that:

"...this section of the Guidelines is intended to refer to the BBC's overall coverage of particular subjects and not to particular programmes. Even where mention is made of circumstances where it might be necessary to feature different views in one programme this is intended to ensure that "all the main views are reflected in our output". It is not intended to be a yardstick by which individual programmes are judged".

The Committee also noted that the complainant had written to the ECU noting that he had made previous complaints to the BBC on controversial issues and that this was the first occasion on which he had been told that his complaint should have related to the overall coverage of an issue for it to be considered under the related BBC rules.

The Committee also noted that the ECU had provided further clarification on this point when they had written to the complainant stating that:

"...that the Guidelines on 'Controversial Subjects'...applied to overall coverage of a subject rather than to particular programmes. As your complaint was directed at a particular programme I could not agree that this Guideline applied".

In addition the Committee noted that the complainant's letter of appeal stated that applying the ECU's interpretation of the Controversial Subjects Guidelines would be impractical as it may become necessary to assess programmes over long periods of time in order to determine the overall balance of coverage.

The Committee first considered how the Guidelines on Controversial Subjects in force at the time of the broadcast should be applied.

The Committee noted that each programme should be duly impartial in its own right (but that the guidelines also separately explained that in some cases impartiality could also be achieved across a series). The way to achieve impartiality was set out in the Achieving

Impartiality guidelines which also applied to the coverage of controversial subjects in programmes.

With regard to the applicability of the Controversial Subjects section of the 2005 Guidelines, the Committee agreed that, while provision was made for output to be considered over a period of time, this did not preclude their application to a single programme if it was necessary to do so to achieve impartiality.

The Committee noted that bias or an imbalance of views must be avoided when dealing with a controversial subject.

The Committee considered that the subject is a controversial one but did not agree with the complainant that, at the time of broadcast, the subject was highly controversial or that a decisive moment was expected. In this regard, the Committee noted the complainant's comments that the Chilcott inquiry led by Sir John Chilcot was ongoing and that its remit included the aftermath of the military action in Iraq¹. However, the Committee also noted that live evidence was not being taken at the time of the broadcast (although more evidence was due).

The Committee considered the interpretation of the wording relating to "a decisive moment in the controversy".

The Committee concluded that a "decisive moment" was intended to refer to the eve of, or the period immediately preceding, a democratic decision. The Committee considered that the intended purpose of this section of the guidelines was to ensure that in the immediate run up to key decisions about controversial subjects, the BBC reports a range of opinion so as not to influence such decisions.

The Committee considered that the publication of the Chilcot Inquiry was not a "decisive moment": it was not likely to be affected by the expression of views in a television programme and it did not constitute a democratic decision. It was therefore not necessary to consider when the Chilcot Inquiry was intending to publish its findings, at the time the programme was broadcast. In any case, at the time the programme was broadcast in October 2010, the latest information in the public domain was that the Chilcot Inquiry was intending to publish its findings "around the turn of the year": that is several weeks later, and the programme was not broadcast on the eve of, or in the period immediately preceding the anticipated publication of the Chilcot Inquiry.

As such, the Committee did not consider that it was necessary for all the main views to have been reflected in this particular programme. The Committee considered whether the BBC had demonstrated that it had achieved impartiality in a way that was adequate and appropriate to the output, taking into account the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted.

The Committee noted the complainant's allegation that these interviews were included to support "the overall negative stance of the programme".

The Committee noted the opening commentary of the programme outlined above and in particular the section which stated:

"Above all this is the story not of Iraq portrayed by the politicians, but the real Iraq, experienced by those at the heart of the struggle".

Referring back to the pre-publicity material and the opening commentary of the programme, the Committee agreed that the BBC had clearly signposted the nature of the

content and approach. The Committee noted that this was a documentary which set out to use the passage of time to reflect on the views of those who were participants in the events at the time on the coalition's post-invasion strategy. The Committee agreed that, within the context of the programme's stated approach, an appropriate range of views had been reflected. The Committee agreed that the programme had not misrepresented the views of those in agreement with the coalition's post-invasion strategy, and as such met the requirements of due impartiality.

Point 2

The Committee then considered the second point raised by the complainant in respect of the inclusion of interviews with those who supported the coalition strategy, most notably that of Tony Blair on the Andrew Marr Show.

The Committee noted that the BBC executive team had also responded on this point and noted in particular that they had said:

"With regard to the clips of Tony Blair and George Bush, these were used because they provide a picture of the exact political pronouncements being made at the time of the events under examination in this series.

Their use provides journalistic evidence that what was taking place on the ground was not fully being reflected by the political discourse in the UK at the time. It should be noted these clips were widely reported at the time and are historically important.

It is we believe fair and accurate to use these public political statements from the time and to contrast them with the views of highly reputable eye witnesses."

The Committee also considered the transcript of this interview and the context in which the comments were placed:

Timecode 10:33:32

Footage of south of Iraq

Commentator: "The South of Iraq, and its capital Basra, where the British had the lead was another story".

Tony Blair: "The operation that we've been conducting in Basra is now complete. And that operation has specifically deemed to put the Iraqi forces in the main frontline control of security within the city. And it's actually been successful as an operation".

Commentator: "In fact the seven thousand British troops in Basra had lost control of the City and its population of over a million people. Instead Basra was ruled by Shia militia groups who siphoned off cash from the nearby oil fields. After the invasion Basra was relatively peaceful. Now if the British left their bases they faced constant attack..."

And

Footage of Civil unrest 10:38:24

Commentator: In Basra the fighting reached a new peak. In Baghdad the American surge was under way - but there was no British surge. The government decided to scale down their military presence and continue handing over control to the Iraqi security forces.

Footage of Tony Blair Interview 10:38:42

Caption: The Andrew Marr Show, BBC One

Andrew Marr: "Because the Americans are doing the opposite of course in Baghdad. They're pouring troops in in this surge. It seems like a mixed message - are the Americans from what you know entirely happy about what we're announcing of getting them out?"

Tony Blair: "Yes, because they're completely different situations".

The Committee concluded that the inclusion of the interview with Tony Blair and those with American politicians who supported the coalition strategy was fair in illustrating the disjunction between what was being said by the Governments of the time and a range of people who were then actively engaged on the ground.

The Committee did not uphold the complaint that interviews with those who supported the coalition strategy, most notably that of Tony Blair on the Andrew Marr programme were included to support 'the overall negative stance of the programme'.

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.

The One Show, BBC One, 16 May 2011

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

The complaint

Stage 1

The complainant contacted BBC Audience Services to complain that an item on *The One Show* was biased in favour of wearing cycle helmets, which he said was the case with all BBC material on the subject. The complainant said that the item took the view that helmets reduced the risk to cyclists when, in his view there was no good evidence that cycle helmets made cycling safer and there was good evidence to the contrary. The complainant said that the time given in the item to helmet sceptics was less than a third of that given to helmet advocates. The complainant said that a significant strand of argument was unexplored, namely the argument that nowhere where compulsory or substantially increased helmet-wearing had been introduced had seen any reduction in risk to cyclists.

The complainant said that he felt the uncontextualised statement that children represented 20 per cent of all cycling casualties implied that this was a high percentage, which he said was misleading.

The complainant also said that the reporter should have questioned the statements made by interviewees who were in favour of cycle helmets. He said that these interviews were anecdotal, and therefore unreliable, and were not balanced by interviews with helmet sceptics.

The complainant alleged that the BBC had been institutionally biased in favour of cycle helmets for 20 years.

BBC Audience Services replied saying that, while every effort was made to ensure that a range of views was represented and tested over a reasonable period, it was not always possible or practicable to reflect all opinions on a subject within individual programmes. The reply said that the BBC made no editorial comment or judgement on any view, its aim being to provide enough information for audiences to make up their own minds. While the BBC was required to give a fair and balanced report of any controversial matter, account needed to be taken of its coverage over time. BBC Audience Services said that the BBC's journalists, presenters and programme makers were well aware of its commitment to impartiality, and were expected to put their own views to one side.

BBC Audience Services said that, throughout the report, it was stated that some experts believed that wearing a helmet could make cycling more dangerous, and GP Richard Keatinge had clearly expressed his views on not wearing a helmet. The item had also noted that medical opinion was split and that the Parliamentary Under-Secretary of State for Transport, Norman Baker, chose not to wear a cycle helmet. The BBC did not feel that the report was biased, as a range of opinion had been included.

BBC Audience Services said that, while the film and studio discussion had featured strong advocates of cycling helmets, there was no agenda in their favour. The film had included an interview with a GP who felt that the effectiveness of helmets was overstated and saw no good reason for him or his children to wear one. Research by another contributor, Dr Ian Walker, suggested that motorists tended to drive closer to helmeted cyclists, thereby increasing the likelihood of a collision. BBC Audience Services said that it was also made clear that the decision to wear a helmet was a personal choice.

The BBC was therefore satisfied that the item included a range of views on the issue and was duly balanced.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit, reiterating the arguments he had advanced at Stage 1. He noted that the item had omitted to mention the latest report from Transport Research Laboratory (TRL) for the Department for Transport, which he said had found no evidence that helmets improved cyclists' safety. The complainant repeated his allegation of institutional bias and suggested the BBC commission from an independent producer a programme taking into account all the available data, and he offered to act as adviser.

The complainant said that the programme had not mentioned that drivers were responsible for most cyclists' deaths and serious injuries. The complainant also said that the interview with James Cracknell was intended to promote helmets and to make a greater impact than the brief interview with a helmet sceptic.

The complainant cited the Private Members' Bill which was currently in the UK Parliament, and the Northern Ireland Assembly's recent consideration of helmet legislation.

The complainant also noted that James Cracknell was sponsored by the manufacturer of his cycle helmet, and he stated that the programme should have mentioned this.

The complainant said that Dr Ian Walker had complained in an online post about the editing out of a comment he had made about helmets distracting from the real issue (that motorists should not hit cyclists).

The ECU did not uphold the complaint and an ECU Complaints Director gave the complainant the reasons.

He said that, as the complainant had not raised the issue of Mr Cracknell's relationship with the helmet manufacturer within 30 days of transmission, it was out of time for consideration.

Turning to the context of the report, the Complaints Director noted that the item had been prompted by reported comments by Parliamentary Under-Secretary of State for Transport, Norman Baker, who chose not to wear a cycle helmet. The Complaints Director noted that *The One Show* report had been prefaced with the words "some experts believe wearing cycle helmets actually makes cycling more dangerous".

The Complaints Director noted that programme makers were not required on all occasions to explore every argument for and against. The Guidelines required them to be fair and open-minded when examining the evidence and weighing all the material facts, as well as being objective and even-handed, but did not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view. The requirement varied according to the nature of the programme: for such a report in a topical magazine programme, it should be made clear that there was a range

of views, and a sense should be given of at least the outline of some of the main arguments for and against.

The Complaints Director then itemised the elements of the report, which in his view offered a fair, balanced and even-handed account of some of the main strands of argument. He said that not all lines of argument had been explored, but achieving impartiality did not require this. In any event, the report had made clear that this was the subject of serious dispute, had given a sense of some of the important issues, and had not presented one side of the case in a more favourable light. The Complaints Director said that James Cracknell's interview should be considered in that context.

The Complaints Director said that, although there was no-one in the studio to challenge Mr Cracknell, his was only a personal view broadly on a par with that expressed by the cycle accident victim in the report. There was no sense in which, in itself, his view refuted or significantly challenged the arguments of the more expert interviewees who had spoken against wearing helmets. Although, overall, the pro-helmet case probably enjoyed more airtime than the case against, the report did not lack impartiality.

Appeal to the Trust

The complainant appealed to the BBC Trust, saying that the ECU had failed to follow the Editorial Guidelines on balance and impartiality. He repeated his allegation that the BBC had been institutionally biased on this subject for 20 years. In the complainant's view, the item promoted the use of helmets. The complainant contrasted what he considered to be the lengthy interview with James Cracknell with the shorter interview with the sole helmet sceptic. The complaint said the helmet sceptic's views were not explored and nor were the data on the effects of helmets examined.

The complainant said that the article was biased in the time given to helmet advocates (4' 20") and sceptics (1' 17"). The complainant said that the ECU's claim that the programme had not presented one side in a more favourable light than the other was "absurd" and he regarded this as further evidence of institutional bias.

The complainant asked the Trust to investigate the complaint that Mr Cracknell was sponsored by his helmet's manufacturer. The complainant said that the ECU had misrepresented Dr Walker's position by claiming that he was opposed to the wearing of cycle helmets. The complainant also referred to the online comments previously attributed to Dr Walker and inferred that the report had been deliberately edited to remove comments which the complainant said made the point that helmets were ineffective.

The complainant repeated his argument that no country which had compulsory or substantially increased helmet-wearing had seen any reduction in risk to cyclists.

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

The Head of Editorial Standards said she had considered the appeal against the BBC's Editorial Guidelines on Impartiality. She said that the Agreement accompanying the BBC Charter requires the BBC to do all it can to ensure controversial subjects are treated with due impartiality in news and other output dealing with matters of public policy or political or industrial controversy. But the BBC goes further than that, applying due impartiality to all subjects. She explained, however, that the requirements for due impartiality will 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.

The Head of Editorial Standards said that *The One Show* is a popular magazine programme with topical reports, features and interviews from around the United Kingdom. Its tone is lively and informal, and its aim is to address issues of popular interest in ways that wide audiences will find engaging, accessible and entertaining, as well as informative. She said that in evaluating whether the impartiality of the item was adequate and appropriate, account must also be taken of the subject and nature of its content, the likely audience expectation and any signposting that may influence that expectation. She noted that the item approached the subject from a human interest angle. It took the personal accounts of two accident victims – Pam Murphy and James Cracknell, both of whom had sustained brain injuries while cycling – as the point of departure for an examination of the arguments on both sides of the debate. The item was clearly signposted as such, and the audience would have expected it to offer a personal perspective, rather than scientific analysis.

The Head of Editorial Standards noted that the Editorial Guidelines on impartiality say:

“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 Head of Editorial Standards said that she did not consider the timings given by the complainant to be correct, but in any case, it is not possible to measure impartiality through looking at the amount of airtime allocated to each side of the debate. She was satisfied that the programme makers had made a valid editorial decision to approach the subject via the personal accounts of cycle accident victims who believed that their injuries had been mitigated by wearing a helmet.

The Head of Editorial Standards noted that the wearing of cycle helmets is a subject upon which strong views are held on both sides of the argument. She said there is no consensus within the scientific and medical professions, and a polarisation of opinion among cyclists. The debate is complicated by the lack of uniformity of analysis of the subject, some approaching it as a matter of common sense and others invoking notions of personal liberty.

The Head of Editorial Standards noted that the complainant had cited the report by transport consultancy TRL, which was commissioned by the Department for Transport. In order to illustrate how such reports can yield contradictory interpretations she said it was worth citing the report’s conclusions in full, and did so. She said that she could not reconcile the complainant’s argument (that the report found no evidence that helmets improved cyclists’ safety) with the report’s overall conclusion. She noted that the first four primary bulleted paragraphs of the report all contradicted the complainant’s assertion. She said that the complainant’s argument appears to rest upon a selective reading of the statement, made in the final primary bulleted paragraph, that, in the literature reviewed, population studies tended to show a lower protective effect than hospital-based studies, or no effect. The Head of Editorial Standards noted that this paragraph neither endorses the findings of the population studies nor dismisses the findings of the hospital-based studies, but rather identifies some of the reasons for the discrepancy between the two.

The Head of Editorial Standards said that she was satisfied that the wearing of cycle helmets can be a “controversial subject” within the meaning of the Editorial Guidelines.

She noted that, in his introductory remarks, the reporter had said:

“Now you’d think by wearing all this gear I’m being a safe cyclist, but there are some experts who believe that wearing a cycle helmet actually makes riding a bike more dangerous.”

She said that this clearly, accurately and succinctly stated one strand of the anti-helmet argument. This was reiterated immediately after the interview with Pam Murphy – over images of cyclists both with and without helmets - culminating in footage of Dr Ian Walker cycling without a helmet. The reporter stated:

“But despite cases like Pam’s, some experts claim wearing protective headgear could actually be more dangerous. A study of two-and-a-half-thousand motorists by the University of Bath appeared to show notable differences in driver attitude towards cyclists who wore helmets.”

The Head of Editorial Standards noted that there followed an interview with Dr Walker in which he explained that, as his research suggested that motorists tended to drive closer to helmeted than non-helmeted cyclists, wearing a helmet could possibly result in harm.

She noted that the reporter’s voice-over continued:

“And even medical opinion is split. The British Medical Association wants the wearing of helmets to be made compulsory, while GP Richard Keatinge disagrees. He thinks the effectiveness of cycle helmets has been over-stated and ultimately it’s an issue of personal freedom.”

GP Richard Keatinge then explained in an interview that helmets put people off cycling, and that, for certain population groups, the risks of obesity and heart failure through lack of exercise were far greater risks than falling off a bicycle.

For these reasons, the Head of Editorial Standards was satisfied that the programme makers ensured that a wide range of significant views and perspectives was given due weight and prominence. The views of helmet sceptics were acknowledged, summarised and articulated, and, although the account of their arguments was not necessarily an exhaustive one, the Editorial Guidelines do not require this.

The Head of Editorial Standards said that both Ms Murphy and Mr Cracknell believed, correctly or incorrectly, that their helmet had protected them from more serious injury or death. She said their stories and views were clearly offered not as being objective, disinterested or authoritative, but rather as being subjective, personal and anecdotal. She said it would have been evident to the audience that the pro-helmet contributors’ opinions were attributable to their own personal experiences, and were not being offered as fact.

The Head of Editorial Standards noted that the guidelines on impartiality say that:

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

She noted that the item was not limited to a specific aspect of the issue, nor to the expression of a single view. However, even if this had been the case, the item was clearly signposted, acknowledged the existence of a range of views, gave them appropriate weight and did not misrepresent them.

The Head of Editorial Standards noted that the guideline continues:

“Consideration should be given to the appropriate timeframe for reflecting other perspectives and whether or not they need to be included in connected and signposted output.”

She said that this guideline presupposes that the output in question was limited to a specific aspect of the issue or to the expression of a single view, which was not the case here.

For these reasons the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success before the ESC on the ground of lack of impartiality. Nor did she consider it to be appropriate, proportionate or cost-effective for the ESC to address the appeal on this ground.

The Head of Editorial Standards then turned to the complainant’s allegation of institutional bias. She noted that this was the second time in 2011 that the complainant had alleged that the BBC is institutionally biased in favour of wearing cycle helmets. She noted that, as on the previous occasion, the complainant had given no evidence to support his case. She said that there was no evidence of which she was aware that would tend to suggest that the BBC’s coverage of this issue has, over time, been biased or unbalanced in favour of either side. She said that, as the complainant had not had a specific complaint of bias upheld, it was hard to see how the general complaint could be sustained.

For these reasons she did not consider that the appeal had a reasonable prospect of success before the ESC on the ground of institutional bias. Nor did she consider it to be appropriate, proportionate or cost-effective for the ESC to address the appeal on this ground.

With regard to the alleged commercial relationship with the helmet manufacturer, the Head of Editorial Standards noted that the ECU’s Complaints Director had correctly stated that the complainant had not raised the issue of James Cracknell’s relationship with the helmet manufacturer within 30 days of transmission and it was out of time for consideration.

Nevertheless, as there may have been reasons why it was not possible for the complainant to raise this issue sooner, she decided that this aspect of the complaint merited a substantive response. The Head of Editorial Standards noted the apparent inconsistency between the helmet manufacturer’s and distributor’s position on the one hand and Mr Cracknell’s on the other. Whereas the manufacturer lists Mr Cracknell as one of its sponsored athletes, and the distributor describes Mr Cracknell as “Alpina Brand Ambassador”, Mr Cracknell states on his website:

“I have no commercial relationship with a helmet manufacturer or retailer”.

The Head of Editorial Standards said, however, that it was not necessary to resolve this question, citing the guidelines on “Undue Prominence and Contributors” by way of explanation:

“We must avoid undue prominence when contributors appear on chat shows and other programmes where they are promoting a product, such as a film, album or book. Although proper editorial discussion is perfectly acceptable, the related product should not normally be used as a prop unless clearly editorially justified. Any visual references, particularly close-ups of an album cover or pages of a book, must have clear editorial justification.”

She noted that the passage from Mr Cracknell’s website (quoted above) continues:

“[I have] no reason to bang on about this other than a desire to stop any other cyclist – and their loved ones – experiencing a year like mine.”

She said that James Cracknell was not promoting a product such as a film, album or book, but advocating the use of equipment that he believed, correctly or incorrectly, had saved his life. The interview with him was primarily a human interest story, and while his personal experience had prompted his advocacy of cycle helmets in general, he was not endorsing any make or model in particular. She said the audience would have readily inferred from Mr Cracknell's story that his reasons for advocating the use of cycle helmets were personal, not commercial.

So far as the prominence of the make and/or model of the helmet was concerned, the Head of Editorial Standards said there were two shots in which the manufacturer's name (at 8' 14" and 9' 19") and one shot in which the model name (at 8' 46") were visible, but there were no close-ups of either. In none of these shots was the branding prominent, and the make and model of the helmet were never mentioned.

The Head of Editorial Standards said that the editorial justification for showing Mr Cracknell's cycle helmet was twofold: first, to give the audience a vivid intimation of the violence of the accident, from the presence of dried blood on the helmet; and secondly, to illustrate that, in contrast to the severity of Mr Cracknell's brain injuries, the helmet was relatively intact.

For these reasons the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success before the ESC on the ground of any commercial relationship that Mr Cracknell may or may not have with the helmet manufacturer. Nor did she consider it to be appropriate, proportionate or cost-effective for the ESC to address the appeal on this ground.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal.

The complainant reiterated his arguments against the wearing of cycle helmets, which he said the BBC studiously ignored in its output, and challenged the Head of Editorial Standards' use of the TRL report. He emphasised his argument that nowhere with a massive rise in helmet wearing due to a helmet law or information campaign can show any reduction in risk to cyclists. He repeated his allegation that the item on *The One Show* had been biased and argued that the programme's approach had been deliberately chosen to give the audience the impression that cycle helmets are highly effective. He said that the validity of the personal views of the pro-helmet interviewees had not been challenged.

The complainant also said that the commercial relationship between the helmet maker and James Cracknell was a matter of fact and that the BBC had a financial interest in maintaining James Cracknell's reputation.

The complainant said that he had verified that the comments posted on the internet regarding the editing of Dr Walker's interview were genuine and were made by him.

The complainant said that there have been three attempts to pass legislation to make cycling without a helmet a criminal offence, so the matter was a "controversial subject" as specified in the Editorial Guidelines. He said that the Head of Editorial Standards had not acknowledged this fact. The complainant said that, given there are continuous proposals for legislation about helmet wearing, it should always be treated as a controversial subject and be handled under the stricter provisions for highly controversial subjects, requiring all the main points to be reflected.

The complainant said that, as the Head of Editorial Standards had not provided her own timings for the time devoted to each side of the argument, his must be accepted as fact. The complainant reiterated his argument that the range of views was restricted and

narrow, with the most significant argument against helmet effectiveness completely ignored, and the views of helmet sceptics only superficially examined. He said that, if the distribution of time had been equal, these views could have been examined in much greater detail, and the most telling argument could have been articulated.

The complainant pointed out that he had made a previous complaint about institutional bias. The complainant said that the BBC had never reflected the opinions of those with the most reliable evidence about cycle helmets and, as in this case, deliberately excluded them. He said that this had serious implications for public policy and health, and it must therefore be appropriate, proportionate and cost effective to examine it. The complainant said that as part of his previous complaint of institutional bias, which was not upheld, he had provided a considerable amount of evidence. He provided a further 62 links to BBC content of which he said almost all showed a clear presumption in favour of cycle helmets.

The complainant repeated his request for a programme looking at how, what he described as “the myth of cycle helmet effectiveness”, had arisen.

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 the Head of Editorial Standards’ decision. The Committee was also provided with the final response from the Editorial Complaints Unit and *The One Show* report in question.

The Committee noted the arguments that the complainant had put forward in support of his claim that *The One Show* report had been biased. The Committee also noted his general contention that the BBC was institutionally biased.

The Committee noted that the guidelines require that the BBC “do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will vary.”

The Committee noted that the Head of Editorial Standards had explained the context and nature of the programme.

The Committee noted that the Head of Editorial Standards had highlighted the helmet sceptic views which were pointed out in the programme. It agreed that the views of helmet sceptics were acknowledged, summarised and articulated, and, although the account of their arguments was not necessarily an exhaustive one, the Editorial Guidelines do not require this.

The Committee agreed that it is not possible to measure impartiality through looking at the amount of airtime allocated to each side of the debate.

The Committee noted that the complainant had referred to a proposal which he said was about to be put before Parliament at the time the programme was broadcast, as well as a discussion in the Northern Ireland Assembly.⁴ The Committee agreed with the Head of Editorial Standards that this subject could be regarded as controversial and that the

⁴ A bill was not introduced in the UK Parliament until 14 July 2011, and a bill had been halted in the Northern Ireland Assembly on 5 May 2011, so no legislation was active at the time of the broadcast.

passage of legislation could render it so but that the BBC had demonstrated *The One Show* item had met the requirements set out in the impartiality guidelines whether this item was regarded as covering a controversial subject or not.

The Committee noted that the complainant had argued that the views of the pro-helmet interviewees should have been challenged. The Committee was mindful that section 4.4.18 of the Editorial Guidelines states that:

“Contributors expressing contentious views, either through an interview or other means, must be rigorously tested”.

The Committee considered that views on the wearing of cycle helmets were not contentious within the meaning of the Guidelines and there was no requirement under the Editorial Guidelines for the views of the guests to have been rigorously tested.

The Committee noted that the complainant had disputed the evidence for the benefits of cycle helmets cited in the responses from the BBC and the Trust’s Head of Editorial Standards. It agreed with the Head of Editorial Standards that the wearing of cycle helmets is a subject upon which strong views are held on both sides of the argument, and there is no consensus within the scientific and medical professions, and a polarisation of opinion among cyclists. The Committee agreed, however, that the programme had appropriately reflected the range of significant views and perspectives.

Having considered the arguments put forward by the BBC at Stages 1 and 2, and by the Head of Editorial Standards at Stage 3, and taking into account the points advanced by the complainant in his challenge to the Head of Editorial Standards’ decision, the Committee agreed that there was not a reasonable prospect of success for an appeal on the grounds of bias in *The One Show* report.

With regard to the complainant’s allegation of general bias, the Committee noted that in response to the Head of Editorial Standards’ decision he had provided a list of links which, he said, in almost all cases showed a clear presumption in favour of cycle helmets. The Committee noted that these specific items had not been raised in the correspondence at Stages 1 and 2 for this complaint. The Committee agreed that it should not consider the links as they had not been raised with the Executive. Further, the Committee agreed that given no previous complaints from the complainant on either general bias or on specific output had been upheld, there was no reasonable prospect of success for this element of the appeal.

Finally, the Committee noted the complainant’s assertion that there was a commercial relationship between James Cracknell and a helmet manufacturer. The Committee noted the response from the Head of Editorial Standards on this point. The Committee agreed that, regardless of whether such a relationship existed, the interview with James Cracknell was primarily a human interest story. The Committee noted that the interview about his personal experience had included his advocacy of cycle helmets in general and he was not endorsing any make or model in particular. The Committee agreed that there was no reasonable prospect of success for an appeal on this ground.

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

Today, BBC Radio 4, 29 July 2011; “Torrent of abuse’ hindering ME research”, BBC News Online

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

The complaint

Stage 1

The complainant wrote to BBC Audience Services to complain about the *Today* programme broadcast on 29 July 2011. She stated that during the programme “claims of malicious harassment were made against the ME community and its supporters”.

She said that the programme had wrongly juxtaposed alleged criminal acts with legitimate, non-criminal actions of advocates, such as (but not limited to), writing to ethics committees, or making formal complaints to official bodies, or making public objections to controversial claims. She said that the effect was that innocent and responsible activities were claimed as harassment and insinuated as criminal.

The complainant noted that she was a known critic of some of those working in the medical research field connected with ME/Chronic Fatigue Syndrome and said that she felt that the programme had put her at risk of being deemed a criminal.

The complainant also criticised the accompanying online article, which she said also exhibited prejudice towards the ME community.

The BBC’s reply included a response from the *Today* programme’s editor, who said that the piece made it clear that none of the complaints made against the scientist in question was upheld – by the scientist’s university, the GMC or the Medical Ethics Committee. The point being made therefore was that such complaints could be seen as part of a campaign of harassment which at one extreme involved threats to kill but at the other also included attempts to undermine the credibility of the researchers involved. At no stage did the piece state or even suggest that there was anything wrong with pursuing legitimate complaints against scientists or stating a view contrary to the medical establishment.

The complainant was not content with this response and received another reply from a *Today* programme output editor, who said that the report made it clear that it was alluding to a series of official complaints about personal and professional misconduct which formed part of a campaign of vilification against the scientist in question. The fact that none of them was upheld suggested they were vexatious complaints. The output editor said the report was referring to this kind of complaint and not to complaints raising issues of genuine concern – whether upheld or otherwise.

Stage 2

The complainant wrote to the Editorial Complaints Unit, setting out the grounds for her complaint and summarising the responses that she had received from BBC Audience Services.

The complainant said that the *Today* programme had formed part of a sustained media campaign by the professor who was featured, and others mentioned in BBC programmes, in which the allegations they made had been taken at face value, and no right of reply given to those people accused of “malicious” or “criminal” harassment.

The complainant said that the BBC responses had not addressed her complaint about the accompanying website article.

A Complaints Director at the ECU replied, outlining the nature of the complaint and stating that the complainant's concerns would be investigated against the relevant sections of the Editorial Guidelines on Accuracy and Impartiality. The Complaints Director said that he had passed on the element of the complaint regarding the article to BBC News Online for their urgent attention.

The Complaints Director noted that the complaint referred to, but did not identify "other radio programmes" which had caused the complainant similar concerns. He said that without further detail on these programmes (and until a 'stage 1' response in regard to them had been issued) it was not open to him to investigate.

The Complaints Director did not uphold the complaint and wrote to the complainant with the results of his investigation. He acknowledged that the complainant had responded with information about other programmes which might have included similar material, but said that without more detail it was not possible to investigate this part of the complainant's concerns. He also noted that having contacted BBC News Online, they had confirmed that they had nothing further to add to the response that the complainant had already received from the BBC regarding her concerns about the radio piece, and therefore he had considered it as part of his investigation.

The Complaints Director said the subject of the effect of campaigns against scientists working in the ME/CFS field was explored throughout the *Today* programme, with "two-way" interviews with the reporter, brief references in news bulletins, reports featuring interviews with the scientists affected, and a live interview with Dr Shepherd of the ME Association. He had considered the impression given by these pieces individually and judged as a whole.

The Complaints Director said, in his view "...nothing within the material seemed to ... have the effect of suggesting that the act of complaining to medical bodies was not legitimate, or equivalent to making death threats". He went on to note that certain references within the programme would have had the effect of guarding against such an impression. In his contribution to the programme, Professor Wessely drew a distinction between direct intimidation – which he described as "letters, emails, occasional phone calls and threats" and "indirect intimidation through my employer or the GMC" which he said was "intended to denigrate, and try and make you into a leper".

The Complaints Director also quoted from what the reporter had said in the programme and on the website:

Reporter: Well this is a pretty alarming campaign of harassment targeting a pretty small group of academics, mostly in psychiatry, working on Chronic Fatigue Syndrome, and has included abuse and intimidation, death threats as you said, vilification on internet websites – but also a series of official complaints alleging both personal and professional misconduct to universities, ethics oversight boards, and the General Medical Council.

The Complaints Director said that this seemed to fall some way short of suggesting that formal complaints are criminal acts on a par with death threats. He said, however, that it does suggest that formal complaints have been used as part of a campaign of harassment. The Complaints Director said that it does not follow that all who make such complaints are themselves part of such a campaign, or that all such complaints are

groundless or without merit. He did not believe that this was the conclusion which the audience would have reached.

The Complaints Director said that it is a fact that some of the actions referred to (including lodging formal complaints) while legal, may be considered by those who are targeted by them as a form of harassment, or as vexatious by the bodies complained to. He said that, given the comments of the scientists included on what they had experienced, it seemed fair to conclude that they considered such actions to be a form of abuse or intimidation. Similarly, criticism (or "vilification") on websites may seem a reasonable action to some, but may be considered by the subjects of the criticism to constitute harassment. In the context of reports which considered the effect that such acts of protest had on medical research into ME/CFS, and specifically the reaction of the scientists affected, the Complaints Director said it was reasonable to reflect their concerns, and their perspective on the actions that they considered to have contributed to a reticence to undertake more research – including perfectly legal acts such as formal complaints to medical bodies.

The Complaints Director referred to the contribution made to the programme and the online article by Dr Shepherd from the ME Association. He noted that Dr Shepherd's contribution made clear that the actions of a few in the ME/CFS community were not representative of the vast majority and that this sort of personal intimidation was unacceptable and counterproductive. He noted that Dr Shepherd had expressed the view that many had justifiable concerns about, for instance the funding of research into ME/CFS and the way in which the medical world has categorised the condition. The Complaints Director concluded that this would have guarded against the conclusion that all such complaints were vexatious or groundless, while demonstrating that not all who have protested have taken extreme measures to get their point across. He went on to note that balance was achieved by the inclusion of Dr Shepherd, who spoke of the legitimate frustration of some with, or affected by, the illness.

Appeal to the Trust

The complainant appealed to the BBC Trust. With reference to the response from the ECU the complainant raised the following points in her letter of appeal:

Point 1

While Dr Shepherd's comments claimed there were only "a minority" involved in "harassing" behaviour, this supported the incorrect claim that taking part in legitimate activities to express concern or objection constitutes "harassment". The complainant said that it did not in any way guard against the incorrect and prejudicial claims that legitimate activities constituted harassment.

Point 2

The use of Professor Wessely's distinction between "direct" and "indirect" "intimidation" denoted an assumption that legitimate activities such as writing to employers or the GMC constituted "intimidation".

Point 3

The programme makers were asserting that legitimate activities such as making official complaints or expressions of concern, and FOI requests, constitute "harassment" and "vilification".

Point 4

Assertions made by the ECU were clearly prejudicial to the amount of importance attached to the actual substance of the complaint.

Point 5

The ECU's defence of the BBC by supporting the right of some people to deem legitimate activities as "harassment" breaches the BBC's editorial policy in respect of fairness and accuracy.

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

She considered the complaint with reference to the Editorial Guidelines on accuracy and impartiality.

With regard to the complainant's appeal points 1 and 3, the Head of Editorial Standards noted that the complainant felt that using Dr Shepherd's comments to negate her concerns was incorrect.

The Head of Editorial Standards referred to the ECU response, which quoted what Dr Shepherd had said on the *Today* programme with regard to the "tiny minority" of people with ME indulging in intimidating behaviour.

The Head of Editorial Standards noted that Dr Shepherd's views were also made clear in the web page which supported the radio report, in which he was again quoted as saying that personal intimidation was unacceptable and counter-productive. The Head of Editorial Standards said it was clear that Dr Shepherd was expressing the view that a small amount of people are involved in behaviour which could be seen as personal intimidation. The Head of Editorial Standards noted the ECU's comment that:

"...Dr Shepherd effectively put the case in his contribution that many with legitimate concerns consider extreme actions unacceptable. He referred to how the issues might properly be debated..."

The Head of Editorial Standards said it was clear that Dr Shepherd was making a distinction between legitimate protest and those involving "personal intimidation".

The Head of Editorial Standards therefore did not agree with the complainant's claim that Dr Shepherd's comments suggested that taking part in legitimate activities constitutes harassment, and she did not believe that such a claim was made in the programme.

The Head of Editorial Standards said that the appeal would not have a reasonable prospect of success on this point.

The Head of Editorial Standards noted that the complainant had also said that the programme makers were asserting that that "legitimate activities such as making official complaints or expressions of concern, and FOI requests, constitute 'harassment' and 'vilification'."

The Head of Editorial Standards noted what the programme had said in this regard:

Reporter: Well this is a pretty alarming campaign of harassment targeting a pretty small group of academics, mostly in psychiatry, working on Chronic Fatigue Syndrome, and has included abuse and intimidation,

death threats as you said, vilification on internet websites – but also a series of official complaints alleging both personal and professional misconduct to universities, ethics oversight boards, and the General Medical Council.

She also noted what the online article said:

“Scientists working on Chronic Fatigue Syndrome (CFS), or ME, say they are being subjected to a campaign of vicious abuse and intimidation that is hampering research into the causes of the condition. The harassment has included death threats, vilification on internet websites, and a series of official complaints alleging both personal and professional misconduct to universities, ethical oversight committees and the General Medical Council (GMC)”.

The Head of Editorial Standards noted the comments made by the ECU Complaints Director, namely that the comments made by the reporter seemed “to fall some way short of suggesting that formal complaints are criminal acts on a par with death threats ... Importantly however it does not follow that all who make such complaints are themselves part of such a campaign, or that all such complaints are groundless or without merit ...”

The Head of Editorial Standards noted that the reporter did include official complaints as examples of harassment. However, she also noted that he did not suggest that all who make official complaints are therefore guilty of harassing behaviour. FOI is not mentioned. Nor are expressions of concern. “Vilification on internet websites” was described as just that. It was not suggested that “official complaints or expressions of concern, and FOI requests” add up to vilification.

The Head of Editorial Standards therefore did not believe that the appeal had a reasonable prospect of success on this point.

With regard to the complainant’s appeal point 2, the Head of Editorial Standards noted the comments made by the ECU Complaints Director in explaining the personal views of some of the scientists that were featured in the interviews. She noted in particular his statement that, “It is a fact that some of the actions referred to (including lodging formal complaints) while legal, may be considered by those who are targeted by them as a form of harassment, or as vexatious by the bodies complained to”.

The Head of Editorial Standards agreed with the ECU Complaints Director that, given the comments from the scientists included in the programme on what they had experienced it seemed fair to conclude that they considered such actions can be a form of abuse or intimidation. The Head of Editorial Standards repeated her statement that this did not carry the meaning that all who contact the GMC or employers are acting in a way that is harassing or vexatious. The Head of Editorial Standards was satisfied that Professor Wessely was expressing his point of view and that the audience could make up their own mind on the matter.

The Head of Editorial Standards therefore did not believe that the appeal had a reasonable prospect of success on this point.

With regard to the complainant’s appeal point 4, the Head of Editorial Standards noted that she did not feel the ECU attached the correct importance to her complaint. She noted that the complainant felt that the Complaints Director and the programme team were implying that “...any complaint through official channels constitutes ‘harassment’”. The Head of Editorial Standards said she did not believe that this was the conclusion being drawn by the Complaints Director or programme team, or that this conclusion was implied in the programme. In terms of BBC consideration of complaints, the Head of Editorial Standards said that each complaint is considered on its merits. She said the published or

broadcast content is judged against the relevant editorial standards, and she was satisfied that this was the case in respect of this complaint. The Head of Editorial Standards said that the ECU had acted within their remit and the complainant had not made a case that their reasoning was prejudiced.

The Head of Editorial Standards did not believe that the appeal had a reasonable prospect of success on this point.

Turning to the complainant's appeal point 5, the Head of Editorial Standards said that she was satisfied that there had been no "prejudicial conflation" of legitimate activities with allegations of death threats. She noted that the ECU had considered the complaint against the guidelines concerning accuracy and impartiality, and she agreed with their findings that the programme and online article did not breach these Guidelines for the reasons outlined above. The Head of Editorial Standards explained that the Fairness guidelines would only apply if the complainant was a directly affected party (making a first party complaint), and she did not believe that the complainant fell into this category as the programme was not about her.

The Head of Editorial Standards concluded by saying that she appreciated this was a matter about which the complainant felt strongly. However, she was satisfied that the appeal had no reasonable prospect of success and should not therefore proceed to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. She criticised the reliance on semantics in the responses to her complaint and said that her complaint had been as much about the effect of the use of insinuation, the logical conclusion of comments and paraphrasing in the programme as what was actually said.

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 the Head of Editorial Standards' decision. The Committee was also provided with the final response from the ECU, the relevant excerpts from the *Today* programme and the accompanying website article.

The Committee noted that the complainant alleged the *Today* programme and accompanying article had breached the BBC's Editorial Guidelines by including comments which she believed implied that those pursuing legitimate means to challenge the work of certain ME researchers were guilty of harassment, intimidation, and vilification. The Committee noted that the complainant believed the programme had been prejudiced in the assumptions it made.

The Committee also noted that the complainant believed the responses from the programme team and ECU had demonstrated prejudice which affected the handling of her complaint.

The Committee agreed that the programme did not make claims of "malicious harassment" against the ME community and its supporters.

The Committee noted that the Head of Editorial Standards had agreed with the ECU that Dr Shepherd had made a clear distinction in the programme between legitimate protest and those involving "personal intimidation". The Committee agreed that the comments made by Dr Shepherd did not suggest that taking part in legitimate activities constitutes harassment.

The Committee also noted what the reporter had said in the programme and the article and agreed with the Head of Editorial Standards that, although he did include official complaints as examples of action taken by those accused of harassment, he did not suggest that all who make official complaints are therefore guilty of harassing behaviour. The Committee noted that the programme and the article had not specifically mentioned use of the Freedom of Information Act or expressions of concern and it agreed that it was not suggested that these add up to vilification.

The Committee agreed that it would be fair to conclude, from the comments made by the scientists included in the programme and the article, that some scientists considered some actions which are legal (including lodging formal complaints) to be a form of abuse or intimidation. The Committee agreed that it did not necessarily follow from this that the programme or the accompanying article was saying that all who contact the GMC or employers are acting in a way which is harassing or vexatious. The Committee agreed that Professor Wessely was expressing his point of view and that the audience could make up its own mind on the matter.

The Committee did not agree with the complainant that it was the logical conclusion from what the programme team and the ECU had said that any complaint through official channels constitutes harassment. The Committee agreed that this was not implied in the programme or in the correspondence about the complaint. The Committee agreed that the ECU had acted within its remit and that it had not seen any evidence to suggest that the ECU's reasoning was prejudiced.

The Committee also agreed that as the complaint was not from a first party directly connected with the programme, it was not appropriate to consider the complaint against the Fairness guidelines.

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

Kara Tointon: Don't Call Me Stupid, BBC One, 18 January 2011

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

The complaint

Stage 1

The complainant wrote to the BBC to complain about the BBC One programme *Kara Tointon: Don't Call Me Stupid*. He said that the programme was inaccurate in stating that dyslexia is a lifelong condition with no cure as this was "pure conjecture". The complainant also said that the programme was wrong to say that Ms Tointon had a neurological deficit as the MRI scan showed that she was using the same pathways that a non-dyslexic person uses but that she had a longer processing time. The complainant said this meant she fell into the group that his research could help and that the BBC, if it is to be impartial, should say so.

The complainant said he would be happy to contribute to an upcoming programme on dyslexia by way of balance, or for there to be a published statement. He also said that the BBC should refrain from allowing experts to make statements that cannot be proven, or it should state that this is a hypothesis and not a fact.

In a follow-up letter, the complainant said that dyslexia affected many children adversely. He said that the programme discriminated against those with disabilities by propounding an unproven hypothesis and not covering his own thesis. He included an article about suicide among young dyslexics.

The complainant received a response from BBC Vision's Complaints Management & Editorial Standards Adviser, who said that the programme did not set out to look at every theory about the condition but to look at Ms Tointon's experience. He added:

"The description of dyslexia as a 'lifelong neurological condition' and the other references to brain function are in line with the broad scientific consensus, however the programme also acknowledges that dyslexia has only been widely recognised in the last 15 years and that scientists are still trying to work out its causes."

He concluded:

"Had we been made aware of your research during production we would have been happy to give it due consideration. The fact that we were not however does not diminish my belief that the programme and website are in keeping with the principles of due accuracy as set out in the BBC's Editorial Guidelines."

Stage 2

The complainant escalated his complaint to the ECU on 17 October 2011. He complained about the length of time it had taken to get to this stage and detailed the various correspondences that had taken place.

The complainant referred to the BBC response which had said, "Had we been made aware of your research during production we would have been happy to give it due consideration". The complainant said that he had been attempting to contact programme makers at the BBC since 2005.

The complainant said that he did not take issue with the programme focusing on Kara Tointon's experience, and that of the other young people she met, but he thought that it was not helpful to tell them that they have a lifelong neurological problem which can not be cured. He said this was especially so when it is not proven and regarded as a hypothesis by experts.

The complainant then outlined his alternative reading of the condition and his thesis that it is not a neurological problem. He repeated his argument that other conclusions are hypotheses and should not be presented as fact. He said that any information relating to neurology or psychology conditions that could not be proved should be removed. He said that to do otherwise would be to discriminate against the disabled and would be a breach of the disability discrimination act.

A Complaints Director at the Editorial Complaints Unit (ECU) responded to the letter, explaining that, although the complainant had referred to related web pages, he would confine his investigation to the television programme. The complainant said that, if the complaint against the programme was upheld he would like the web pages considered too.

The ECU Complaints Director did not uphold the complaint and wrote to the complainant explaining his decision. The Complaints Director said that viewers would have been left with the impression that dyslexia is a neurological condition that makes reading difficult and that the condition has only been widely recognised in the last 15 years and scientists are still trying to work out what causes it. He said that the audience would also have understood that people are born with dyslexia and, although its effects can be addressed, it cannot be cured.

The Complaints Director acknowledged that the complainant would not agree but said he had conducted research which appeared to support the conclusion that the broad consensus of informed and knowledgeable experts does appear to be in line with the description given in this programme.

The Complaints Director said that it was reasonable for the programme makers to rely on the weight of this informed opinion and so what was broadcast was not inaccurate or misleading.

The Complaints Director also said that he had read the complainant's research and thesis with interest but he could not accept it as it had not been widely peer-reviewed in scientific journals of note, which would ensure that it had been rigorously checked and verified. He added that he could not discover widespread support for or acceptance of the complainant's opinion and was therefore unable to uphold the complaint.

Appeal to the Trust

The complainant wrote to the BBC Trust to say that he thought the ECU decision was ambiguous and wrong. He specifically mentioned the suggestion in the programme that dyslexia has only been widely recognised in the last 15 years and cited a mention of the condition going back to the late 19th century.

The complainant cited several papers which he said supported his argument and added that he thought the BBC had a duty of care to him and every other dyslexic person in the UK. He said the BBC should offer an unreserved apology on BBC news highlighting his complaint. Alternatively, the complainant said the BBC should make another programme featuring him and his thesis about dyslexia.

The BBC Trust's Head of Editorial Standards replied to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to

check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards said that she had read the relevant correspondence and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Head of Editorial Standards said that she did not consider that there would be a reasonable prospect of success were the complaint to be considered by the Editorial Standards Committee, and she set out the reasons for her decision that his appeal did not qualify to proceed for consideration by the Committee.

The Head of Editorial Standards summarised the complaint under three headings:

1. The programme's discussion of dyslexia without considering the complainant's thesis
2. The use of the phrase "has only been widely recognised in the last 15 years, so scientists ... are still trying to work out what causes it"
3. The excessively long complaints process

The Head of Editorial Standards then addressed each point in turn.

Point 1

The Head of Editorial Standards said that the finding of the ECU – specifically with regard to the need for new or original theses to be peer-reviewed in scientific journals of note – is difficult to challenge. She noted that the complainant worked with a scientist on his thesis but she also took into account that the doctor involved was fairly junior at the time and that other scientists do not seem to support the thesis to any great extent. Indeed, she could find no substantial article cited in any of the leading journals, or peer-reviewed in them, that would support the thesis.

She said that the ECU, in citing the websites of many of the leading dyslexia experts and charities in this country, was doing what the BBC Trust would expect programme-makers to do: namely, to look for the expert opinion on the subject.

The Head of Editorial Standards said that, as the BBC had pointed out at Stage 1, this programme was not a scientific analysis of all the theories about dyslexia – if it had been, maybe the complainant's should have been considered alongside other alternatives – but rather it was a portrayal of one young woman's attempt to understand the condition which had affected her since childhood.

For this reason, the Head of Editorial Standards did not think the complaint on this point had a reasonable prospect of success.

Point 2

The Head of Editorial Standards said that clearly dyslexia has been defined and recognised to some extent for over a century but, equally clearly, the amount of study has concentrated and increased considerably in recent years, with the interest of neuroscientists and others. She also said that the phrase "widely recognised" implied recognition by more than purely the scientific community, that the condition has reached general awareness among the populace and, especially, in the classroom. She said that, while this thought could have been spelt out more fully, it would be unlikely that the Editorial Standards Committee would find this lacked "due accuracy" in the context of the programme. She said that there was little prospect this complaint would be upheld.

Point 3

The Head of Editorial Standards apologised on behalf of the Trustees for the amount of time the complaint had taken to progress, and she said she understood his frustration with this. The Head of Editorial Standards understood that the matter was not, in the first instance, perceived as a complaint. However, she also understood that the complainant was provided with the correct details for how to progress his complaint following a letter he wrote to Ofcom and his letter to the Trust. The Head of Editorial Standards noted that, once the nature of the complaint had been grasped, both the Complaints Management & Editorial Standards Adviser at Stage 1 and the Complaints Director at Stage 2 treated the complaint courteously and in a timely fashion. Given this, she did not think there was a reasonable prospect of success for this aspect of his complaint and she did not propose to put it before the Committee.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He stated that the Head of Editorial Standards had wrongly summarised his appeal when she stated it concerned the specific diagnosis of Ms Tointon's dyslexia and the BBC's resistance to covering his expertise and opinions about dyslexia. He highlighted that his complaint was that the programme inaccurately referred to dyslexia as a life-long neurological condition which cannot be cured, and that this was hypothesis presented as fact. He reiterated his arguments against views reflected in the programme and advanced further arguments in support of his own view that there is no proof that dyslexia is a neurological condition. The complainant asked for a list of experts who contributed their findings and opinions to the programme. The complainant stated that the BBC had rejected empirical observation in favour of theoretical opinion and reiterated his view that if empirical observation was rejected then anything which could not be proved should be rejected in order to maintain due accuracy. Finally, the complainant criticised the BBC's reliance on the consensus of expert opinion, which he said in the past had been used to support slavery and the persecution of gay people.

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 the Head of Editorial Standards' decision. The Committee was also provided with the final response from the ECU and the programme in question.

The Committee noted that the complainant had objected to the fact that the programme had referred to dyslexia as a neurological condition with no cure. The Committee noted that he had also objected to the programme's statement that dyslexia has only been widely recognised in the last 15 years and that scientists are still trying to establish the cause.

The Committee noted that the complainant felt strongly about the subject and that it was one in which he was greatly interested, having developed his own thesis. The Committee was mindful that it was not determining the validity or otherwise of the complainant's thesis, but whether there were grounds for the complaint that the programme had breached the Editorial Guidelines on Accuracy. The Committee agreed that the programme was not a scientific analysis of all the theories about dyslexia but rather a portrayal of one woman's attempt to understand the condition which had affected her since childhood. The Committee noted that the ECU's Complaints Director had said that his investigation showed that the broad consensus of informed experts was in line with the description given in the programme. The Committee also noted that the Head of Editorial Standards could find no substantial article cited in any of the leading journals, or peer-reviewed in them, that would support the complainant's thesis. Given this context, the Committee was satisfied that there was not a reasonable prospect of success for an appeal on this point.

With regard to the programme's statement that dyslexia has only been widely recognised in the last 15 years, the Committee agreed with the Head of Editorial Standards that this implied general awareness among the populace and, in particular given the context of the programme, in the classroom. The Committee did not consider that the complainant's example of a reference to dyslexia dating back to the 19th century contradicted this statement. The Committee agreed that there was not a reasonable prospect of success for an appeal on this point.

The Committee noted and endorsed the apology given to the complainant by the Head of Editorial Standards for the delay in progressing the complaint. It noted the circumstances which had contributed to the delay and agreed that, given the complaint had been handled appropriately following the initial issues, there was not a reasonable prospect of success for an appeal on this aspect of the complaint.

The Committee noted the complainant's criticism of the BBC's use of expert consensus and agreed that this use was legitimate and within the Editorial Guidelines relating to due accuracy. The Committee noted that the complainant had asked to be provided with a list of the experts whose findings and opinions were relied on by the programme. The Committee agreed that the BBC had appropriately answered the complaint and there was no requirement to provide the further details which the complainant had asked for.

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

***Countryfile*, BBC One, 14 August 2011**

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

The complaint

Stage 1

The complainant contacted BBC Audience Services to complain that *Countryfile* had been incorrect to use the word "acre" when describing land area in relation to farm subsidy because the only standard measurement allowed within the EU is "hectare".

BBC Audience Services replied with an answer supplied by the programme department, which agreed that since the EU is metric, the complainant had been technically correct. The reply went on to say that *Countryfile* consistently uses acres when referring to measurements of land area, as this is still by far the most common and familiar unit of measurement for this purpose used in the UK. The phrase used in the broadcast – "At the moment farmers get paid by the acre..." simply referred to the fact that they get paid by the area of the land that they farm. The reply said that EU subsidies are calculated by both whole and parts of a hectare, and so can reflect the exact acreage that a farm covers. The programme believed that what was said was correct and was phrased in the best way for the audience to understand it.

The complainant replied, quoting an EU directive which came into force in 2010 and which stated that the term acre is no longer permitted for the registration of land. The complainant said that the term "acre" was an anachronism and that the BBC should be educating the public in the use of the current unit.

The BBC reiterated that *Countryfile* viewers still commonly use and understand acres as an area of land measurement and therefore it did not agree that the wording of the report would have confused any viewers.

Stage 2

The complainant wrote directly to the BBC Trust and was advised that the next stage of the complaints process was handled by the Editorial Complaints Unit. The ECU passed the complaint to the programme's Executive Editor, who said that he stood by his earlier response. He said that, whilst hectare may be the preferred term used by the EU and specialist producers, he believed that the majority of *Countryfile* viewers would be as, or even more, familiar with acres as a measurement of size.

Appeal to the Trust

The complainant appealed to the BBC Trust stating that his points had not been addressed, and reiterating that he believed the BBC's guidelines require it to use the proper term.

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

The Head of Editorial Standards noted the phrase to which the complainant objected:

“At the moment farmers get paid by the acre...”

She said it was true that, under European rules, the formal process for payments is calculated by the hectare. She said, however, that it was neither inaccurate nor misleading to describe the system in terms of acres given that subdivisions of a hectare can be used to obtain the correct subsidy and so as the BBC said “...reflect the exact acreage that a farm covers”. She noted that the two items on the programme from which this phrase was lifted contained a detailed explanation of the history and operation of farm subsidies, with views from supporters and those who wished to see change. She noted that the guidelines on accuracy state:

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

The Head of Editorial Standards explained that the term “due accuracy” 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.

She said that viewers from both the farming community and the more general *Countryfile* audience would have fully understood the point being made. The Head of Editorial Standards was of the view that, when tested against the requirement for due accuracy there was no reasonable prospect of success for this point of appeal.

On the complainant’s more general point that the BBC should be committed to educating the public, the Head of Editorial Standards said that the whole item in question was designed to achieve just that and did not knowingly or materially mislead its audience, which is another key test under the guidelines on accuracy.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He repeated his point that the BBC should not be using the word “acreage” to mean “area”. He said that very few people knew how big an acre is and that the BBC should be fulfilling its obligation to educate by explaining that a hectare is 100 metres by 100 metres. The complainant said that the BBC’s argument that audiences would be more comfortable with the word “acre” had not been backed by statistical evidence. The complainant said that the BBC was misleading the public into believing that the acre was an official measure.

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 the Head of Editorial Standards’ decision. The Committee was also provided with the final response from the Executive Editor of the programme in question.

The Committee noted that the complainant was correct to say that the basis of the EU subsidy was the area of land measured in hectares. However, the Committee agreed that it was neither inaccurate nor misleading within the meaning of the Editorial Guidelines to refer to the area in terms of acres: the *Countryfile* audience would have understood the reference to acres, and the subdivisions of a hectare can be used to obtain the correct subsidy.

The Committee therefore agreed that there was no reasonable prospect of success for the appeal.

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

High-pitched noises on the BBC News Channel (appeal out of time)

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

The complaint

The complainant originally raised a complaint about background noise on the BBC News Channel with BBC Audience Services. Following the escalation of his complaint, he received a number of responses from the BBC News Sound Craft Leader and the Head of Editorial Compliance and Accountability for BBC News. A final Stage 2 response from the Head of Editorial Compliance and Accountability dated 24 August 2011 explained that the complainant could now raise this matter with the Trust if he wished to do so.

Appeal to the Trust

The complainant wrote to the Trust on 21 December 2011 to escalate his complaint.

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

In her response, the Head of Editorial Standards noted that the Trust's Editorial Appeals procedure states:

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

She noted that the complainant's appeal to the Trust was received outside this 20 working day period, and that he had not supplied reasons for the delay in his appeal. She therefore did not propose to proceed with the appeal any further.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He said that the high-pitched noises on BBC News Channel presenters' microphones can be heard "almost every minute of the day".

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 the Head of Editorial Standards' decision. The Committee was also provided with the final responses from the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted that the complainant had made his request for an appeal 4 months after he had been referred to the Trust by the Head of Editorial Compliance and Accountability for BBC News, well outside the 20 working day timeframe set out in the complaints procedure. The Committee noted that the complainant had provided no

explanation for the extreme delay. The Committee agreed that given that no good reasons for the delay had been provided, it would not be appropriate to accept the complaint which was out of time.

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

Off the Ball, BBC Radio Scotland, 14 May 2011

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

The complaint

Stage 1

The complainant contacted the BBC to say that he was "hugely offended by Stuart Cosgrove's repeated use of the Hun word" in the BBC Radio Scotland programme, *Off the Ball*.

BBC Audience Services responded to the complainant, giving apologies for the delay and explaining that Mr Cosgrove had been making the point that there was a historical context within which the word "Hun" would not be regarded as sectarian or offensive. The response also explained that the BBC was aware of the sensitivities which surrounded use of the word "Hun" and briefed programme teams about this.

The complainant replied, saying that the word "Hun" was sectarian and highly offensive to many in Scotland, and he did not believe that it had been used in a historical context in the programme. He also said that he wished to complain about the length of time it had taken the BBC to answer his complaint.

BBC Audience Services repeated that the BBC did not condone the use of the word "Hun" when used in a sectarian context. However, the point made by Mr Cosgrove was that when used in a historical context the word had validity and legitimacy. BBC Audience Services also apologised for the time it had taken to respond to the complaint. They explained that this had been caused by a sizeable backlog of correspondence on a range of issues.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit at Stage 2 of the BBC's complaints process. A Complaints Director at the ECU told the complainant that he would investigate the complaint under the BBC's Harm and Offence guidelines dealing with portrayal. The Complaints Director explained that the BBC guidelines on portrayal were concerned with the characterisation of people on the basis of their race, religion etc., so that BBC output did not have the effect of perpetuating prejudice.

The Complaints Director said that it was arguable that the word "Hun" had a straightforward factual meaning which was independent of any pejorative use to which it might be put, and that was the point which Mr Cosgrove had been making in the programme. The Complaints Director did not believe, therefore, that Mr Cosgrove's comments represented a serious breach of the BBC's editorial standards.

The Complaints Director also referred to comments by Tam Cowan in the same programme. Mr Cowan had told a story based on a humorous play on words. Although this had the word "Hun" at the heart of the joke, there was no discriminatory or abusive intent and it was the sort of use envisaged by the guidelines. Again, therefore, the Complaints Director did not believe that there had been a serious breach of editorial standards.

The complainant replied, saying that he did not accept the finding. The complainant reiterated that in his view Mr Cosgrove's use of the word "Hun" was unnecessary, out of context and done to offend. This had happened in spite of promises by BBC Scotland after previous complaints that the word would not be used in programmes.

The Complaints Director replied, maintaining that the word "Hun" had not been used in a derogatory way. He explained that under BBC Editorial Guidelines there were no words which were absolutely prohibited. The key considerations were issues such as context and intent. Having taken these factors into account, he could not agree that the use of the word on this occasion represented a serious breach of standards.

Appeal to the Trust

The complainant wrote to the BBC Trust, saying that he did not accept the ECU's finding and reiterating his concerns. He also said that he would like an explanation of why it had taken so long for the BBC to respond to his initial complaint.

The complainant mentioned in his appeal that he had not heard from the Complaints Director since he had replied to the ECU finding. The Trust Unit passed this information to the Complaints Director, who resent his response.

The BBC Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards on 18 January 2012, explaining that the Trust does not adjudicate on every appeal that is brought to it, and that part of the role of the Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. She explained that the Head of Editorial Standards had read the relevant correspondence and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards had asked her to stress that she was very conscious of the sensitivities in Scotland relating to use of the word "Hun" and she accepted that the complaint had engaged the Harm and Offence BBC Guidelines on portrayal.

However, she explained that the Head of Editorial Standards also believed that the Complaints Director had provided a satisfactory response to the points the complainant raised. She agreed with the Complaints Director that the word "Hun" was not used in a derogatory way in the programme. Mr Cosgrove was simply explaining the context in which the word might legitimately be used (e.g. in describing the battles fought by Attila in the fifth century) and he specifically acknowledged that this did not permit the use of the word in a sectarian way (e.g. against a Rangers' fan).

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards also agreed with the Complaints Director that Mr Cowan's use of the word, in referring to a joke told by a caller, was not intended to be discriminatory or abusive and is the kind of usage permitted under the guidelines. This meant that in the view of the Head of Editorial Standards the complainant's appeal did not have a reasonable prospect of success if it were to proceed to the ESC.

The Senior Editorial Strategy Adviser explained that the Trust Unit had noted the points the complainant had made regarding the delays experienced in making his complaint. The Head of Editorial Standards apologised on behalf of the Trustees and assured the complainant that they had been aware of the problems with BBC Audience Services over the last year and would continue to monitor the situation.

The Senior Editorial Strategy Adviser explained that the Trustees were informed of the systems failure at Stage 1 of the complaints system at the time it occurred. They were extremely disappointed with this but were kept informed of the resulting backlog and delay (which BBC Audience Services alluded to in their response to the complainant of 23 July 2011), and of the actions taken by the BBC Executive to remedy the situation. The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards had noted

the complainant had received apologies from BBC Audience Services and felt it would be disproportionate to proceed with this matter further given that the Trust is fully aware of the situation and that the complainant had already received an apology.

In view of the fact that this delay had been acknowledged and explained, and that the complainant had now received apologies on behalf of the Executive and from the Head of Editorial Standards on behalf of the Trust, the Senior Editorial Strategy Adviser explained that the Head of Editorial Standards did not believe that there was anything further to be gained from an appeal to the Trustees. She explained that the Head of Editorial Standards considered the matter to have been resolved, and that she had therefore determined that it would not be appropriate, proportionate or cost effective for the Trust to address an appeal on this ground.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. The complainant said that, whether the use of the word "Hun" was intended to offend or not, it did. He said that its use had no place on a light-hearted comedy show looking at football. The complainant asked for assurance that the BBC would only use offensive sectarian language in shows that are dealing with the issue and not football or comedy shows. The complainant said that many of his family and friends were also offended by the show.

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 the Head of Editorial Standards' decision. The Committee was also provided with the final response from the ECU and the programme in question.

The Committee noted that the complainant felt strongly that the word "Hun" should not be used in any context in a light-hearted football or comedy programme. The Committee noted that the ECU Complaints Director had explained that under the Editorial Guidelines there were no words which were absolutely prohibited and that the key considerations were issues such as context and intent. The Committee was very conscious of the sensitivities in Scotland relating to use of the word "Hun". However, the Committee agreed that, in this instance, the context in which the word "Hun" had been used was not derogatory and that its use had been appropriate. The Committee agreed that there was no reasonable prospect of success for this point of appeal.

With regard to complaint handling, the Committee noted that the complainant had experienced delays in the initial replies to his complaint. The Committee was mindful that it was aware of the problems with BBC Audience Services over the last year and that it would continue to monitor the situation. The Committee endorsed the apology given to the complainant by the Senior Editorial Strategy Adviser on behalf of the Trust. However, in light of the acknowledgement and apologies for the delays which the complainant had received from the Executive and the Trust, and in light of the fact that the Trust would continue to monitor the situation the Committee agreed that this point of appeal did not raise a matter of substance, noting that it would not be appropriate, proportionate or cost effective for the Trust to address this point of appeal.

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

“Eastern European migrants ‘add £5bn’ to Britain’s GDP”, BBC News Online

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that: the complainant’s appeal did not qualify to proceed for consideration by the Committee; and the Expedited Procedure would be applied to future complaints.

The complaint

Stage 1

The complainant wrote to the BBC on 1 May 2011 to complain about an online article published that day with the headline “Eastern European migrants ‘add £5bn’ to Britain’s GDP”, which reported the findings of a report by the National Institute of Economic and Social Research (NIESR). He said that it was misleading for two reasons.

Firstly, the complainant said that the headline implied this amount of money was added each year, when this was not the case. Secondly, he said that no reference was made in the article to East European migrants taking work from British people and so not adding extra money to the economy.

The BBC News Online team disagreed that the headline was misleading as it was an accurate summary of the article. They pointed out that the opening paragraph of the article made clear that the increase in GDP had occurred over a period of years.

They said that there was no statistical support for the complainant’s second point, that East European migrants were taking work from British people. They pointed to government research in 2006 that showed no evidence to suggest that such migration had been a contributor to rising unemployment in the UK.

Turning to the issue of whether immigration had had a beneficial effect on Britain’s GDP, they cited an exchange from the House of Lords Economic Affairs Committee in 2008, a Home Office report on immigration in 2007 and an OECD assessment of the UK in 2006 as supporting evidence that this was indeed the case. As a result, they said that they believed the article to be fair and balanced.

The complainant wrote again and described the article as pro-European propaganda. He said those reading only the headline would have been misled as there is a presumption that GDP is measured over a period of a year. However, the increase that the headline was highlighting took place over five years.

The complainant asked whether the BBC could prove that GDP would have been lower if East Europeans were not here. He reiterated his belief that East European migrants were taking work from British people and he said that they were driving down wages in Britain.

BBC News Online team replied saying that it was not the BBC’s job to prove whether GDP would have been lower in the absence of East Europeans. They said that the article merely reported the findings of a study by the National Institute of Economic and Social Research, but that the complainant seemed to be interpreting this report on research by another organisation as the BBC’s own views.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit at Stage 2 of the process. He said the online article was no more than pro-East European propaganda.

The complainant repeated his complaint that the headline was misleading and inaccurate as it made readers think that East Europeans contributed £5 billion a year to the British economy, whereas this contribution was made over a five year period. He acknowledged that the article made this clear, but said this was not useful for those readers relying on the headline.

The complainant also said that he believed the article failed to show due impartiality because it did not report that East European migrants were taking jobs from British people, driving down wages for British people, forcing up rents and reducing the amount of housing available to British people.

A Complaints Director at the Editorial Complaints Unit wrote to the complainant with the outcome of his investigation. He said he had considered the complaint against the BBC Editorial Guidelines covering Accuracy and Impartiality.

The Complaints Director began by considering whether the headline had been misleading. He said that the complainant believed an inaccurate impression had been given that European migrants added £5 billion a year to the British economy as GDP is often used as an expression of national wealth calculated over a period of one year.

The Complaints Director cited the BBC's definition of GDP as being a measure of the value of all goods and services produced in the economy in a given period of time, normally one year. He said that there was no requirement that GDP must represent an annual figure. As a result, he said that, while he accepted that a more precise definition may have been desirable, he did not agree that this amounted to a breach of editorial standards.

The Complaints Director pointed out that the first paragraph of the article made clear that the £5 billion figure covered a five year period. He said this would have rectified any misapprehension that readers may have been under.

Turning to the issue of due impartiality, the Complaints Director said that it was worth remembering that the article was summarising the findings of one particular piece of research and that it was not an investigation into the ramifications of immigration into this country. He set out the explanation of due impartiality from the BBC Editorial Guidelines and said that he did not believe that, in a brief news article such as this, all arguments for and against immigration needed to be covered.

The Complaints Director said he believed that, in cases like this, the adequate and appropriate degree of impartiality was achieved by an acknowledgement that the issue was controversial and providing some of the arguments which might be deployed by those with alternative views. The Complaints Director said he felt this requirement was fully met in the article by the inclusion of the chairman of MigrationWatch UK. As a result, the Complaints Director said he was unable to uphold the complaint.

Appeal to the Trust

The complainant appealed to the BBC Trust. He said that he believed readers were misled by the online article's headline. He said the BBC's failure to admit that the headline was confusing indicated that the BBC was still intent on misleading people. He suggested that the BBC clarified its definition of GDP to make it clear to licence fee payers to what period it is referring.

Turning to the issue of due impartiality, the complainant acknowledged that a relatively brief news article could not cover all the issues to do with immigration. However, he said it should have mentioned that East Europeans were taking work from British people as this was one of the main arguments against such immigration. He said that not to do so was a clear breach of impartiality.

The complainant said that the BBC was engaged in pro-East European immigrant propaganda and was betraying the British people. He concluded by saying that he was compiling a dossier of instances where there had been misconduct by BBC staff working in complaints.

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

Turning first to the headline, the Head of Editorial Standards noted that the complainant believed it gave an inaccurate impression that East European migrants added £5 billion a year to GDP as he said most people believed this expression of national wealth to be calculated over a period of one year.

The Head of Editorial Standards noted too that the complainant had cited the BBC's definition of GDP. She said that, as explained to the complainant by the Editorial Complaints Unit, there is no requirement in the BBC's definition that GDP must represent an annual figure. In addition, she noted that the article made clear in its opening paragraph that the contribution of £5 billion was made since 2004. She noted that both within the body of the article and in a picture caption within the article it was stated that the period being discussed was 2004 to 2009. As a result, she said that the complainant had not made a case that there was a breach of the Accuracy guidelines. She therefore did not consider that his appeal on this point had a reasonable prospect of success.

On the issue of due impartiality, the Head of Editorial Standards noted that the complainant had acknowledged that a brief news article could not cover all the issues to do with immigration. However, she noted that the complainant felt the article should have said that East Europeans were taking work from British people, as he said this was one of the major arguments against immigration.

The Head of Editorial Standards noted that BBC News cited government research in 2006 which showed no evidence to suggest that such migration had contributed to rising unemployment in the UK. In addition, BBC News had cited other evidence supporting the fact that immigration had had a beneficial effect on Britain's GDP.

The Head of Editorial Standards said that, given the context of the article was an explanation of the outcome of a piece of research and not an overall exploration of the impact of immigration into the UK, she did not believe that the article failed to be duly impartial by not mentioning the argument that East Europeans were taking jobs from British people.

The Head of Editorial Standards noted that the ECU had explained the principle of due impartiality and had said that, in a brief news article such as this, an adequate and appropriate degree of impartiality was achieved by an acknowledgment that the issue is controversial and providing some of the arguments which might be used by those in disagreement.

The Head of Editorial Standards noted too that the article included the following comment by the chairman of MigrationWatch UK, an organisation that campaigns for tougher controls on immigration:

"This report is clear evidence that the contribution of these migrants was trivial. They added about one per cent to the population but only about one third of one

per cent to production. Given the extra strain of public services, this has to be a poor deal for the public, especially in the areas most affected.”

The Head of Editorial Standards said that the article fulfilled the due impartiality requirements and she did not believe that the complainant had made a case that there was a breach of the Editorial Guidelines. She therefore determined that there was no reasonable prospect of success for the appeal and it was not appropriate for it to proceed to the Trust for consideration.

The Head of Editorial Standards then set out an explanation regarding the handling of future complaints from the complainant.

She said that the complainant had made complaints to the BBC which fell under categories a, b and d of the Expedited Complaints Procedure in that they:

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

She considered that this was the case with complaints that contained allegations against the BBC's output regarding race or nationality, and complaints which threatened action against BBC staff and complaint handlers. She said that the complainant had made five previous unsuccessful appeals to the BBC on matters of race, racism or nationality. In his correspondence this year with the Trust he had also persistently threatened action against BBC staff and complaint handlers in connection with complaints which had no reasonable prospect of success.

Consequently, the Head of Editorial Standards determined that the Expedited Procedure should be applied. She explained that this procedure was limited to complaints on the matters referred to above. It did not apply to complaints on other matters.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal and also the decision to apply the Expedited Procedure to his complaints.

In this response he said that one of his appeals had been in progress at the time of the Head of Editorial Standards writing, and he asked to which other complaints she had referred. The complainant asked for an answer to the question of whether the NIESR report had given the actual figures for the amount added to GDP by East Europeans or on “estimates and guesses”.

The BBC Trust's Complaints Adviser, replied, explaining what the five previous unsuccessful appeals referred to were. She said that the complainant was correct to point out that one was in process at the time of writing to communicate the decision to apply the Expedited Procedure. She explained this appeal was considered by the ESC at their 12 January meeting and apologised for the error. She explained it would be brought to the ESC's attention at their February meeting when they considered his appeal against the Head of Editorial Standards' decision.

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 the Head of Editorial Standards' decision. The Committee was also provided with the final response from the Editorial Complaints Unit and the BBC News article in question.

With regard to the substance of the complaint, the Committee noted that the complainant's appeal was based on the grounds that readers would have been misled by the article's headline, and that the article should have included the argument that East Europeans were taking work from British people.

The Committee noted that the BBC's own definition of GDP allowed for the measurement to be across periods other than one year. The Committee also noted that the first paragraph of the article had made it clear that the quoted £5 billion was since 2004, and both within the article and on a picture caption it had been stated that the period being discussed was 2004 to 2009. The Committee agreed that there was no reasonable prospect of success for an appeal on the grounds that the headline had not met the requirements for due accuracy.

With regard to impartiality, the Committee noted that the complainant had acknowledged that a brief news article could not cover all the issues to do with immigration but he said that it should have mentioned that East Europeans were taking work from British people as this was one of the major arguments against immigration in his view. The Committee noted the research cited by the Head of Editorial Standards and BBC News which showed no evidence that such migration had contributed to rising unemployment in the UK. The Committee also noted that the article had contained a comment from MigrationWatch UK.

The Committee agreed that there was no reasonable prospect of success for the appeal on the grounds that the article had breached the guidelines on impartiality.

The Committee noted that the complainant had asked for information regarding the basis for the figures in the NIESR report. The Committee noted that the article was reporting the findings of the recently published NIESR report and that this was accurately conveyed in the headline by the use of quotation marks around the phrase "add £5bn". The Committee agreed that the methodology employed by the NIESR was not a relevant consideration in the question of whether the article had been accurate in reporting the NIESR findings.

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

Turning to the decision to apply the Expedited Complaints Procedure, the Committee requested more information with regard to the previous complaints which had been cited by the Head of Editorial Standards. The Committee's decision in this regard was put on hold pending the information which it had requested.

Complaint handling

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that: the complainant's appeal did not qualify to proceed for consideration by the Committee; and the Expedited Procedure would be applied to future complaints.

The complaint

Stage 1

The complainant wrote to the BBC to complain about a lack of balance in the BBC Parliament programme *5 Days that Changed Britain*. He complained about an imbalance in the coverage given to the three parties and said that this manifested itself in the number and duration of slots allocated to each party in the form of interviews and archive video. He also said that he had timed the whole programme and had recorded comparative figures for how long different parties and interviewees had been on screen. He said that the Conservative Party, which had won most votes, only had 25% of the programme by airtime.

The Complaints Adviser for News and Current Affairs said that in striving to achieve balance the BBC did not adhere to a strict reference to the number of contributions assigned to one political position over another, nor to the exact time spent hearing from the different perspectives. He said this complied with the editorial guideline on impartiality. He added that, as many of the clips had been interviewees criticising their own party, it was even less useful to think that just adding up minutes would be determinative in assessing impartiality. He concluded by saying that a wide range of relevant and contrasting views were heard and explored and he did not agree that the programme's approach was biased in favour of or against any political persuasion.

The complainant wrote to the BBC again, having not seen the earlier reply from the BBC. He said he had received no holding response and certainly nothing substantive. He said this gave him a reason to contact the incoming Chairman but that it was very poor practice and outside the complaints standards laid out by the BBC. He re-submitted his original complaint.

BBC Audience Services responded, enclosing their original reply.

The complainant said that he had not received the original reply and asked for proof that it had been sent. He was surprised at the three-day turn round in the response following his follow-up email and speculated that this might have been because he had threatened to contact the new Chairman. The complainant asked for an explanation as to why the first letter from the Complaints Adviser was sent 15 days after his complaint, not the 10 days specified. He objected to his analysis being dismissed as invalid. The complainant said the BBC was in denial about its standards of impartiality and cited five authorities who, he said, supported his view.

The BBC Audience Services Complaints Adviser replied saying that the BBC's database showed the original reply as having been sent. With regard to the speed of reply following the complainant's follow-up letter, the Complaints Adviser said that turnaround times fluctuate somewhat in all consumer-facing complaints operations.

She said that the BBC was not stating the complaint was invalid, just that they did not agree with the complainant's analysis. In spite of the complainant's further thoughts, the BBC still believed the programme adhered to the impartiality guidelines.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit, both in relation to the substantive complaint about the programme and also to the length of time taken to reply to the substantive complaint.

The complainant said his measurements provided evidence to support his view whereas the BBC had put forward unsubstantiated opinion about impartiality. He repeated his argument that it was not reasonable that the party that won the vast majority of support at the polls could have only 25% of the slots during the programme.

On the handling of the complaint, the complainant said that the BBC's record was unacceptable – even taking into account the difference of opinion over the email which the BBC was sure was sent but which the complainant said he had never seen. The complainant said that the excuse that major news stories prevented a timely response could not be relevant. He said that, even if there was a legitimate delay, he ought to have been informed of this. The complainant said that he had received poor service for years and asked how he could not conclude that he had been deliberately singled out for vindictive treatment.

An ECU Complaints Director replied. He had investigated the complaint about the programme against the editorial guideline on impartiality. He said he was looking at “due” impartiality which did not depend on an absolute level of contribution or an equal spread of voices. He said that, in a documentary of this sort “due” impartiality would require that the major strands of thought within those parties on those events were included. Having watched the programme, he was satisfied that they had been.

The Complaints Director said that the programme seemed to him to be fair and appropriately balanced and that it had an appropriately broad range of contributors from across the political spectrum and within the parties. He said that, though he understood the complaint to be that the Conservative Party was under-represented, it had actually had very senior interviews and it seemed to him that the party had come across as being better prepared and more flexible in its successful negotiations with the Lib Dems than the Labour Party had been.

The Complaints Director added that a purely quantitative analysis takes no account of the content and other factors which go to impartiality, such as editing and the use of “neutral” voices. He added that the guidelines do not require strict apportionment by time.

In response to a request from the complainant to look at commissioning and sign-off of the programme, the Complaints Director said that this was not part of the role of the ECU. He said, however, that he had put this to the Head of Editorial Compliance and Accountability for BBC News and she had expressed News' support for the commissioning of the programme.

With regard to the handling of the complaint the Complaints Director forwarded a response from the Complaints Manager at BBC Audience Services. He explained that there had been issues at the time which had affected the Audience Services operation, and that while turnaround times were now being met it was the case that some more complex complaints would fall outside the targets. He was sorry this had happened to this complaint. He also apologised for the team not keeping the complainant informed about the delays and added:

“However, a considerable amount of time, manpower and resources have been devoted by many people across the BBC to your correspondence over a number of years.”

He explained that the complainant had not been singled out or treated differently.

Appeal to the Trust

The complainant wrote to the BBC Trust. The complainant said that the ECU Complaints Director had dismissed the complainant's factual analysis of the programme in favour of subjective opinion. The complainant said that he rejected this assessment.

On complaint handling, the complainant said that the Complaints Manager had glossed over his department's failures, that the apology should be public and that the Trust should rule on the matter.

The complainant asked the BBC Trust to look at these issues.

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

She noted that the complainant had previously corresponded with the Trust Unit about his belief that the measurement of time allocation is the only, or an outstandingly important, method of gauging impartiality in looking at BBC News, Current Affairs and documentary output.

The Senior Editorial Strategy Adviser explained that, as she believed the Head of Editorial Standards had explained before, the BBC does not use a count of minutes of coverage (stop-watching) or of individual contributions as a measure of impartiality because this is often unhelpful and is not required by the Editorial Guidelines. Nowhere do the Guidelines require a totting up by time or contribution to determine the impartiality of the output. She quoted the relevant guidelines on Impartiality in support of this point.

She also noted that the ECU's response had set out the reasons why stop-watching is such an unsatisfactory method for determining impartiality:

"I recognise that you are of the view that without an equal apportioning of time the programme could not be balanced. However it seems to me that a purely quantitative analysis of the contributions could not offer a definitive account of the impartiality of the piece. Such an approach would not be able to consider any aspect of the content of those contributions, the impact of the script/the voiceover, the effect of the contribution of 'neutral' voices such as, in this case, Sir Gus O'Donnell, the editing of the programme, or the many other editorial choices contained within it. Neither would it resolve the complexities of achieving 'balance' in a programme about a coalition between two parties who now govern together. And a situation where there was not unanimity along party lines, in which a contribution from a representative of a political party would not necessarily amount to a positive endorsement of the actions of those within that party. I noted, for instance, that some of the Labour side of the programme acknowledged weaknesses in their approach, and referred frankly to the way in which the personality of Gordon Brown negatively impacted on the possibility of a Lib-Lab coalition."

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards wholly concurred with this reasoning, which is in line with the Editorial Guidelines. She therefore did not believe the appeal on this point had a reasonable prospect of success and did not propose to proceed with the appeal to the Editorial Standards Committee.

With regard to the handling of the complaint, the Senior Editorial Strategy Adviser explained that she had noted the points the complainant made regarding the delays experienced in making his complaint. She said that the Head of Editorial Standards would like to apologise on behalf of the Trustees, and assured the complainant that the Trustees had been aware of the problems with Audience Services over the last year or so and would continue to monitor the situation.

The Senior Editorial Strategy Adviser noted that this delay had been acknowledged and explained, and that the complainant had now received apologies on behalf of the Executive and from the Head of Editorial Standards on behalf of the Trust. The Head of Editorial Standards considered this matter to have been resolved and did not raise a matter of substance, noting that it would not be appropriate, proportionate or cost effective for the Trust to address an appeal on this ground.

The Senior Editorial Strategy Adviser then addressed the issue of future complaints from the complainant. She explained that the BBC's Complaints Framework, paragraph 5.4(b) states:

"If a complainant becomes vexatious with regards to a specific complaint or makes repeated complaints which are without substance or repetitive, the BBC may operate an expedited complaints procedure. This procedure modifies the extent to which complaints are investigated and removes the need to send a response to a complainant in every case. The procedure is published and, in such cases, the BBC must inform the complainant of the decision to apply the expedited complaints procedure and the reasons for this decision (see Annex B)."

Annex B sets out the expedited complaints handling procedure. This states:

5. 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 (ESC).

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards had now taken the view that the complainant had made complaints to the BBC which fall under categories a, b and d.

She said that the Head of Editorial Standards had decided that the expedited procedure should be applied. This was following a number of complaints from the complainant to the Trust based on measuring minutes or contributions to make a complaint about impartiality which was shown to have no reasonable prospect of success.

The Senior Editorial Strategy Adviser explained that any appeal by the complainant that did not 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, would be rejected without any reasons or notification being given. If the

complainant asked, the Trust would confirm that the expedited procedure had been followed.

She explained that the procedure would be limited to complaints that contain allegations against the BBC of lack of impartiality in political programmes or News, based on measurement of time/content apportioned to a person or party. She said it would not apply to complaints on other matters.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal.

The complainant pointed out the length of delay he had experienced and said that the apologies he had received were not good enough. He said that questions about the BBC's complaint handling practice remained unanswered. He asked where licence fee payers could see apologies received regarding complaints handling, and why the Trust should not ask for an apology and make it public.

With regard to the application of the expedited complaints procedure, the complainant said that he refuted any contention that his complaints were "vexatious". He said that he had asked in the past for details of why his complaints had not been dealt with and had not been provided with it. He did not accept the argument that money should not be spent on complaints handling matters. He questioned the period over which due impartiality could be said to be achieved.

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 the Head of Editorial Standards' decision. The Committee was also provided with the final response from the Editorial Complaints Unit and the programme in question.

The Committee noted that the Trust's Senior Editorial Strategy Adviser had explained to the complainant that the BBC's guidelines do not require a count of the minutes given to individual contributions as a measure of impartiality. The Committee also noted the reasons why this type of analysis is unhelpful in assessing whether due impartiality has been achieved. The Committee agreed that the reasoning put forward by the Editorial Complaints Unit was in line with the Editorial Guidelines and that there was not a reasonable prospect of success for an appeal on the grounds that the programme had breached the guidelines on impartiality.

The Committee noted that there had been problems with the handling of the complaint at Stage 1 of the process. The Committee endorsed the apology given to the complainant by the Senior Editorial Strategy Adviser on behalf of the Trust. The Committee was mindful that Trustees were aware of the problems with Audience Services over the last year and would continue to monitor the situation. The Committee noted that the complainant had said that the apologies he had been given were not good enough and that a public apology should be made. The Committee considered that the usual purpose of a public apology was to correct an error that had been made in public. The Committee noted that the personal apologies provided to the complainant were appropriate for the situation in question. The Committee was satisfied that the evidence did not support the complainant's allegation that he had been singled out for specific treatment. The Committee considered there was no reasonable prospect of success for this point of appeal, noting also that it would not be appropriate, proportionate or cost effective for the Trust to address an appeal on this ground and that it did not raise a matter of substance.

Turning to the question of whether the expedited procedure should be applied to future appeals from the complainant, the Committee noted that the complainant had unsuccessfully appealed to the Trust four previous allegations against the BBC of a lack of impartiality in political programmes or News, based on measurement of time/content apportioned to a person or party. The Committee agreed that it was appropriate to apply the expedited procedure to future appeals from the complainant on this basis for the reasons set out in the letter from the Trust's Senior Editorial Strategy Adviser. This would apply for two years from the date of the letter from the Trust Unit applying the procedure.

The Committee therefore decided this appeal did not qualify to proceed for consideration and that the expedited procedure should be applied to future appeals from the complainant which concern lack of impartiality in political programmes or News, based on measurement of time/content apportioned to a person or party.

Secret Iraq, BBC Two, 6 October 2010

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, that elements of his complaint ("the admissibility decision") were not appropriate for review by the Committee in full. The Committee considered the complainant's challenge to the admissibility decision first. The element of the complainant's appeal which the Head of Editorial Standards had advised was admissible was considered separately at the July ESC meeting after the Committee had considered the complainant's challenge to the admissibility decision.

The Complaint

Stage 1

The complainant contacted BBC Audience Services on 7 October 2010 saying that the programme presented:

"a one-sided, highly critical account of the coalition strategy in the post-invasion period (particularly in the UK's role in Basra) and was therefore in breach of editorial guidelines regarding the need for even handedness and impartiality".

BBC Audience Services replied noting that when dealing with controversial matters the BBC is required to give a fair and balanced report. The BBC response said that the issue of balance could not be judged on the basis of time allocated to the representatives of either side of an argument and that as a public service broadcaster, the BBC has an obligation to report on all the various views and opinions on the Iraq war in order to maintain the BBC's impartiality.

A further response from the BBC Audience Services said that the series had achieved due impartiality within each episode and that:

"we heard from high ranking generals, diplomats, spies, insurgents and militants who recounted their experiences of an Iraq that often bore little relationship to the country being portrayed by the politicians".

The BBC response said that these were important and pertinent perspectives from people involved in the conflict, and that the programme had included contributions from members of the British Armed Forces with regards to the programme's analysis of the situation in Basra. The response went on to say:

"We did not seek to broadcast an overtly positive or negative examination of pre/post invasion Iraq. We simply sought to fairly, accurately and clearly explore the complex military, political and religious factors that contributed to one of the most destructive conflicts in recent history".

The complaint was not upheld.

Stage 2

The complainant wrote to the Editorial Complaints Unit stating that he had received a response from BBC Audience Services that he considered to be unsatisfactory.

The complainant noted that the BBC had stated that the picture painted by the programmes "bore little relationship to the country being portrayed by the politicians". The complainant said that in itself this was confirmation that the programme presented only one side of the story. The complainant said that:

“The politicians have another side to this story and therefore in accordance with your rules should have been given or should be given the chance to put their views on this matter”.

The complainant added:

“if the one-sided treatment of this issue is to be defended on the basis of balance being achieved over time I would like to have some idea of when a proportionate balancing programme is scheduled to appear (bearing in mind that this should be done within a reasonably short time under the rules)”.

The ECU wrote back to the complainant with its decision not to uphold the complaint, saying that the programme had made its position clear at the outset by including the following statement at the beginning:

“...Above all this is the story not of an Iraq portrayed by the politicians, but the real Iraq, experienced by those at the heart of the struggle”.

The ECU said that this met the requirement that there should be editorial justification for examining an issue from a particular perspective.

The ECU noted that there were two major strategic issues considered by the programme to which the concerns raised by the complainant might apply. Firstly, the nature and success of the coalition’s initial strategic approach to managing Iraq’s future immediately after the invasion, and secondly the UK’s role in Basra after the occupation in Iraq.

On the first issue, the ECU concluded that the programme had made perfectly clear that events would be seen from the perspective of those on the ground while those events were unfolding, that this was editorially justified and the existence of an alternative view was properly acknowledged. The ECU noted that there is no guideline requirement upon programme-makers to represent every facet of an argument on every occasion. Nor is there a particular requirement that any programme which focuses upon a particular perspective must be balanced by another programme representing the alternative views.

On the second issue, the ECU noted that the Guidelines did not prohibit the programme makers from focussing on the views and testimony of senior military officials who had charge of the British troops in Basra at the time. The ECU stated that there was no requirement that the programme-makers should also explore the views of the politicians who might have a different perspective on the campaign in Basra. The ECU accepted, however, that there was a requirement to avoid representing the military view as unchallenged and non-controversial where this is not so. The ECU concluded that this was achieved through the inclusion of the clip of an interview with Tony Blair on the Andrew Marr Show where he described the British operation in Basra as a success.

The complainant responded to the ECU’s finding, saying that it was unsatisfactory because it “does not relate to the part of the Editorial Guidelines on impartiality which applies to this programme, namely the part covering ‘controversial subjects’ and ‘major matters’”

The complainant said that Iraq was “controversial (if not highly controversial)” and that the controversy was active given that the Iraq inquiry was running at the time the programme was broadcast. The complainant also said that “a decisive moment in the controversy is expected (given that the Iraq inquiry is due to announce its findings in the next few months)”.

The ECU replied stating that the Controversial Subjects section of the Guidelines is intended to refer to the BBC’s overall coverage of particular subjects and not to individual

programmes. As the complaint was directed at a particular programme the ECU concluded that this Guideline did not apply:

"I think it is clear that this section of the Guidelines is intended to refer to the BBC's overall coverage of particular subjects and not to particular programmes. Even where mention is made of circumstances where it might be necessary to feature different views in one programme this is intended to ensure that "all the main views are reflected in our output". It is not intended to be a yardstick by which individual programmes are judged."

Appeal to the BBC Trust

The complainant wrote to the BBC Trust to appeal against the Editorial Complaints Unit's finding. The complainant repeated his view that the programme presented a "negative, one-sided account of the way the post-invasion situation in Iraq was handled by the Coalition", and that in his view the programme breached the BBC's impartiality rules.

The complainant contested in particular the ECU's statement that the Controversial Subjects guidelines did not apply to individual programmes.

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

The Head of Editorial Standards said that, having read the relevant correspondence and watched the programme in question, she did not believe that there was a reasonable prospect of the Editorial Standards Committee upholding the wider complaint about the impartiality of the programme as a whole, particularly in respect of the general coalition strategy post invasion. She said that the programme deployed a very large and wide-ranging cast of interviewees from a number of perspectives, all of whom were in some way expert concerning the unfolding events in Iraq between about 2003 and 2008. The Head of Editorial Standards noted that the American rationale for a change in position was covered. She noted that there were clips from the then-President of the USA, George W Bush, but the discussion was essentially about the emergence of a change in strategy and what effect this had on the ground in Iraq. The Head of Editorial Standards concluded that this approach was well sign-posted at the top and throughout the programme and that the complaint therefore does not meet the requirement that "there is sufficient evidence to suggest that the appeal has a reasonable prospect of success".

Although she did not think that the wider complaint of bias should proceed to the Trust, the Head of Editorial Standards said that the ESC should consider the element of the complaint relating to the UK's role in Basra and in particular the interview with Tony Blair regarding the coalition strategy.

The complainant requested that the Editorial Standards Committee consider his appeal against the decision of the Trust's Head of Editorial Standards not to proceed with elements of his complaint. The complainant said that he did not consider it relevant that the perspective of the programme was signposted or that it was editorially justified to approach the issue from a particular perspective. He said that his reading of the impartiality guidelines was that a subject could not be deemed to have been treated impartially just because its "one-sided nature has been signposted or has been editorially justified". The complainant added that the programme as a whole had aligned itself with those who were critical of the Government's handling of the post-war situation at a time when the matter was being considered by a high-profile public inquiry. The complainant said that somebody should have been invited to put the other side of the story, either in

the programme or in a subsequent studio discussion. The complainant repeated his view that the clips used in the programme were not sufficient to provide balance and said that, in fact, they were included in order to support the alleged one-sided nature of the programme. The complainant argued that covering all points of view about the post-war strategies in Iraq was not sufficient to meet the requirements of the impartiality guidelines as they related to the programme as a whole.

The complainant noted that the Head of Editorial Standards had considered his complaint in relation to the guidelines on controversial subjects and he concluded that this implied she agreed with him that the ECU had been incorrect in not considering the complaint against these guidelines. The complainant asked for confirmation that this was the case.

The Committee's decision

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

The Committee first considered the complainant's appeal against the Head of Editorial Standards' decision at its meeting in July 2011. On receipt of the draft finding the complainant raised an error of fact relating to whether 'a decisive moment in the controversy' was expected. As an exception to the usual process, the Committee reconsidered this aspect of the appeal at its January 2012 meeting and the finding was subsequently amended(see endnote).

The Committee noted that in his challenge to the Head of Editorial Standards' decision, the complainant had raised the question of whether the programme should be considered under the Controversial Subjects guidelines.

The Committee noted that the Head of Editorial Standards letter had referred to the controversial subjects guidelines in relation to the aspect of the appeal that had been taken to the ESC and therefore that it was implied that they applied. The Committee agreed that it should consider this point.

The Committee agreed that it was appropriate to consider the matter with regard to the 2005-2010 Editorial Guidelines and not to retrospectively apply the new version of the Editorial Guidelines, published after the programmes in question had been broadcast.

The Committee noted that the Guidelines set out how to achieve impartiality in all cases:

Achieving impartiality

"Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted.

Impartiality is described in the Agreement as 'due impartiality'. It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view."

The Committee noted that the Guidelines also set out particular provisions for controversial subjects;

Controversial Subjects

"In the United Kingdom controversial subjects are issues of significance for the whole of the country, such as elections, or highly contentious new legislation on the eve of a crucial Commons vote, or a UK wide public sector strike.

In the nations and regions of the UK, controversial subjects are those which have considerable impact on the nation or region. They include political or industrial issues or events which are the subject of intense debate or relate to a policy under discussion or already decided by local government.

In the global context, some controversial subjects such as national elections or referendums will obviously have varying degrees of global significance but will be of great sensitivity in the country or region in which they are taking place. We should always remember that much of the BBC's output is now available in most countries across the world.

We must ensure that a wide range of significant views and perspectives are given due weight in the period during which the controversial subject is active. Opinion should be clearly distinguished from fact. When the issues involved are highly controversial and/or a decisive moment in the controversy is expected we will sometimes need to ensure that all of the main views are reflected in our output. This may mean featuring them in a single programme, or even a single item."

The Committee noted that each programme should be duly impartial in its own right (but that the guidelines also separately explained that in some cases impartiality could also be achieved across a series). The way to achieve impartiality was set out in the Achieving Impartiality guidelines and that also applied to the coverage of controversial subjects in programmes.

With regard to the applicability of the Controversial Subjects section of the 2005 Guidelines, the Committee agreed that, while provision was made for output to be considered over a period of time, this did not preclude their application to a single programme if it was necessary to do so to achieve impartiality.

The Committee noted that bias or an imbalance of views must be avoided when dealing with a controversial subject.

The Committee considered that the subject is a controversial one but did not agree with the complainant that, at the time of broadcast, the subject was highly controversial or that a decisive moment was expected. In this regard, the Committee noted the complainant's comments that the Chilcott inquiry led by Sir John Chilcot was ongoing and that its remit included the aftermath of the military action in Iraq¹. However, the Committee also noted that live evidence was not being taken at the time of the broadcast (although more evidence was due).

The Committee considered the interpretation of the wording relating to "a decisive moment in the controversy".

The Committee concluded that a "decisive moment" was intended to refer to the eve of, or the period immediately preceding, a democratic decision. The Committee considered that the intended purpose of this section of the guidelines was to ensure that in the immediate run up to key decisions about controversial subjects, the BBC reports a range of opinion so as not to influence such decisions.

The Committee considered that the publication of the Chilcot Inquiry was not a "decisive moment": it was not likely to be affected by the expression of views in a television programme and it did not constitute a democratic decision. It was therefore not necessary

to consider when the Chilcot Inquiry was intending to publish its findings, at the time the programme was broadcast. In any case, at the time the programme was broadcast in October 2010, the latest information in the public domain was that the Chilcot Inquiry was intending to publish its findings “around the turn of the year”: that is several weeks later, and the programme was not broadcast on the eve of, or in the period immediately preceding the anticipated publication of the Chilcot Inquiry.

As such, the Committee did not consider that it was necessary for all the main views to have been reflected in this particular programme. The Committee agreed with the Head of Editorial Standards that the range of perspectives included in the programme was sufficient to avoid bias and to ensure due impartiality in the context of the subject matter.

In considering the complainant’s challenge to the Head of Editorial Standards’ decision, the Committee agreed that the three-part series had not set out to provide a definitive overview of the Iraq war and had clearly signposted the angle from which it was coming.

The Committee noted that the 2005 guidelines set out that the BBC may produce content about any subject at any point on the spectrum of debate as long as there are good editorial reasons to do so. The 2005 guidelines on impartiality also set out that the approach to achieving impartiality will vary according to various matters such as the audience expectations, the subject and the extent to which the content and approach is signalled.

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

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

ⁱ At the July meeting, the Committee agreed that although the subject was controversial, it did not think that the issues involved were highly controversial nor was a decisive moment in the controversy expected. It noted that live evidence was not being taken at the time of the broadcast (although more evidence was due) and that the report was not expected to be delivered to the Prime Minister until later in the year (2011).

In accordance with the process set down in Procedure No 1 (“Editorial Complaints and Appeals Process”) of Protocol E3 (“Complaints Framework”), the complainant was subsequently sent a copy of the draft finding in advance of publication for comment on errors of fact or process. On receipt of the draft version of the finding, the complainant contacted the BBC Trust raising a number of points.

Among the points raised he stated that there was a factual error in the ESC’s draft finding regarding whether a decisive moment in the controversy was expected (point 1). The complainant stated that at the time of the programme being made and broadcast, a time period that he noted as July to October 2010, the expectation was that the Chilcot Inquiry would deliver its report by the end of 2010. The complainant noted a BBC news report dated 27 July 2010 that stated “the Inquiry headed by Sir John Chilcot is coming towards the end of its public hearings, with a report expected to be published around the end of the year” (2010).

The complainant stated that in his view, the “factual error” meant that the Committee did not address the key element of his complaint, which was that there was no balancing view expressed in the programme to its main theme that the post invasion situation had been a disaster and that

the politicians had painted a different picture to the one that was being experienced on the ground (point 2).

The Chairman of the ESC considered the points raised by the complainant and decided that:

- as an exception to the usual procedure the ESC should re-examine whether a decisive moment in the controversy was expected
- if, upon re-examination, the ESC find that a decisive moment in the controversy was expected, the ESC should reconsider whether it is necessary for all of the main views to have been reflected in the programme
- the ESC should not consider/ re-consider the other points raised in the complainant's emails.

The Committee considered the points 1 and 2 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 on this issue, and subsequent submissions from the complainant.

The reconsideration of this aspect of the appeal raised issues requiring consideration of the Editorial Guidelines on Impartiality, specifically those on "Controversial Subjects".

Re-consideration by Committee

The Committee understood that Secret Iraq – Awakening was the second of a two-part series exploring post invasion Iraq from the perspective of those that were there on the ground at the time. The Committee noted that the pre-broadcast publicity stated:

"Filmed on the ground in Iraq, Secret Iraq is a landmark two-part documentary series that sheds new light on the dramatic story of Iraq after the fall of Saddam."

The Committee noted the comments made by the complainant in response to the draft finding from the July meeting, and it agreed with the Chairman's decision to reconsider whether there was a decisive moment in the controversy, but to not reconsider the other points raised by the complainant (as they did not raise errors of fact or process).

The Committee noted two key points within the complainant's allegation, firstly the complainant's allegation of an error of fact regarding whether a decisive moment in the controversy was expected. It noted that he stated that at the time of the programme being made and broadcast, (a time period that he noted as July to October 2010), the expectation was that the Chilcot Inquiry would deliver its report by the end of 2010.

The Committee noted secondly that the complainant stated that in his view, the "factual error" meant that the Committee did not address the key element of his complaint, which was that there was no balancing view expressed in the programme to its main theme that the post invasion situation had been a disaster and that the politicians had painted a different picture to the one that was being experienced on the ground.

In its consideration of the first point, the Committee noted the clause of the Impartiality guidelines which relates to Controversial Subjects and which states:

"We must ensure a wide range of significant views and perspectives are given due weight in the period during which a controversial subject is active. Opinion should be clearly distinguished from fact. When the issues involved are highly controversial and/or a decisive moment in the controversy is expected we will sometimes need to ensure that all of the main views are reflected in our output. This may mean featuring them in a single programme, or even a single item."

The Committee noted that at its launch on 30 July 2009, the Chairman of the Iraq Inquiry, Sir John Chilcot, made no comment on the publication date for the findings of the Inquiry in his opening statement. In the Q&A session that followed the launch press conference, Deborah Haynes from The Times asked when he expected the Inquiry to conclude. Sir John Chilcot stated:

“I don’t want to set deadlines, and I can’t, indeed, at this stage. I think it’s clear already to all of us that a period of as little as a year is not going to be enough. So I think late in 2010 is probably the earliest possibility, but I don’t at all rule out the possibility we may have to go beyond that.”

The Committee further noted that on 30 July 2010, Sir John Chilcot stated:

“Over the coming months, we will be analysing and integrating all this evidence and information as we begin to write our report. As we do this, we may find conflicts or gaps within the evidence. If we do, we will need to consider how best to get to the bottom of what actually happened. This may be through seeking additional written evidence or – where we wish to probe more deeply – through holding further hearings possibly recalling witnesses from whom we have heard before. If – and I stress the word “if” – we decide to do this, these hearings would probably take place in the late autumn. ...

We intend to report around the turn of the year. The report will include that material which is necessary to explain what happened; and how and why we have reached our conclusions. If that involves classified or currently unpublished material, we will seek declassification in accordance with the published protocol we have agreed with the government.”

The Committee considered how the Guidelines on Controversial Subjects in force at the time of the broadcast should be applied. In particular the Committee considered the interpretation of the wording relating to “a decisive moment in the controversy”.

The Committee concluded that a “decisive moment” was intended to refer to the eve of, or the period immediately preceding, a democratic decision. The Committee considered that the intended purpose of this section of the guidelines was to ensure that in the immediate run up to key decisions about controversial subjects, the BBC reports a range of opinion so as not to influence such decisions.

The Committee considered that the publication of the Chilcot Inquiry was not a “decisive moment”: it was not likely to be affected by the expression of views in a television programme and it did not constitute a democratic decision. It was therefore not necessary to consider when the Chilcot Inquiry was intending to publish its findings, at the time the programme was broadcast. In any case, at the time the programme was broadcast in October 2010, the latest information in the public domain was that the Chilcot Inquiry was intending to publish its findings “around the turn of the year”: that is several weeks later, and the programme was not broadcast on the eve of, or in the period immediately preceding the anticipated publication of the Chilcot Inquiry. The Committee then considered the second point raised by the complainant, the fact that the “factual error” meant that the Committee did not address the key element of his complaint, which was that there was no balancing view expressed in the programme to its main theme that the post invasion situation had been a disaster and that the politicians had painted a different picture to the one that was being experienced on the ground.

The Committee concluded that in light of its findings in respect of point 1, it was not necessary for all the main views to have been reflected in this particular programme.

Lastly the Committee noted that, in his comments on the Committee’s paperwork for this meeting the complainant had stated that when the Committee decides whether “a decisive moment in the controversy” was expected, it should take into account the guidelines on Fairness, Contributors and Consent. The Committee agreed that these Guidelines were not relevant to the question of whether “a decisive moment in the controversy” was expected. It also agreed that the guidelines on Fairness, Contributors and Consent were not relevant to this appeal, as the appeal was not a

first-party complaint, but a standards complaint. It noted that the Editorial Complaints Procedure sets out the qualifying conditions for an appeal to the BBC Trust. Section 3.10 says:

Your appeal must meet the following criteria:

- (a) It must be about an editorial complaint. Your complaint must concern a breach of editorial standards and be about content (for example, a programme or an online article) for which the BBC has editorial responsibility, as detailed in the BBC's Editorial Guidelines <http://www.bbc.co.uk/guidelines/editorialguidelines>. You may be making a 'first party complaint' about unfair treatment or an infringement of privacy that has directly affected you. Or you may be making a third party 'standards complaint', where you feel the content has breached the BBC's editorial standards in some way.

The Committee agreed that the draft appeal findings from the July meeting should be amended to reflect the Committee's reconsideration of whether a decisive moment in the controversy was expected.