

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Timewatch: The Most Courageous Raid Of WW2, BBC Two, 1 November 2011

The complaint was about a documentary presented by Lord Paddy Ashdown which told the story of a Second World War commando raid on German warships. The complaint was made on behalf of a niece of Sgt Wallace, a commando who took part in the raid and was captured and executed. The complainant said that, by the selective use of only certain facts and the omission of key facts, the programme implied that Sgt Wallace had cooperated at least to a degree with the Germans' interrogation. The complainant said this was inaccurate and unfair. The complainant also raised issues with the handling of the complaint, in particular that the programme should have been removed from iPlayer while the complaint was investigated; that responses to the complaint at Stage 1 had been delayed; and that nobody had taken "ownership" of the complaint at Stage 1.

The Committee concluded:

- that it was not appropriate for the Trust to consider this complaint under the BBC's Fairness guidelines.
- that information about the discovery of Sgt Wallace's canoe and equipment which was omitted was significant to the audience's understanding, and the section of the programme covering the interrogation of Sgt Wallace had not been clear about the source of the Germans' knowledge.
- that in describing why the Germans had not sought further raiders after capturing Sgt Wallace the programme had not been clear that, to some extent, this would have been caused by the misinformation provided by Sgt Wallace in his interrogation.
- that the programme had not knowingly misled its audience.
- that the programme was not presenting a personal view and there was no case to be answered in terms of signposting such views.
- that, while the programme was not duly accurate as a result of the omission of information regarding the Germans' discovery of equipment, there was no evidence to conclude that this was the result of bias. The guideline on Impartiality had not been breached.
- that the receipt of a complaint is not grounds on its own to automatically remove a programme from iPlayer.
- that, while some confusion might have arisen at Stage 1 because several members of the complainant's family were communicating with the BBC and with Lord Ashdown about the programme, the BBC had apologised for any confusion it had caused.
- that, notwithstanding the multiple correspondence, this complainant received a prompt response and there had not been a delay.
- that at all times the producer was aware of the progress of the complaint and dealt with it appropriately.
- that, although the matter was passed to Lord Ashdown for a detailed response, the BBC at all times acknowledged that the responsibility for responding to the complaint remained with them.

- that Lord Ashdown had been exemplary in the way he had dealt with the complainant and with the other members of the family who had corresponded with him.

The complaint was upheld with regard to accuracy. It was not upheld with regard to impartiality or the handling of the complaint.

For the finding in full see pages 8 to 15.

Payments to MP for appearances on *This Week*

The complainant said that the BBC should not have paid Diane Abbott MP for her appearances on *This Week* since joining the Labour front bench.

The Committee concluded:

- that Ms Abbott's appearances on the programme since becoming a shadow minister had been too frequent.
- that payment of a realistic disturbance fee would have been appropriate under the Guidelines, however the payment of such substantial appearance fees to Ms Abbott since she took up her front bench position in 2010 was a breach of the Guidelines.

The complaint was upheld.

For the finding in full see pages 16 to 20.

"Police asked to probe commonwealth games land deals", BBC News Online

The complaint related to a BBC News website article which reported that a member of the Scottish Parliament had asked Strathclyde Police and the Auditor General for Scotland to examine a number of deals in which land had been purchased by Glasgow City Council for use during the 2014 Commonwealth Games. The complaint was made on behalf of Mr Charles Price, who had sold land to Glasgow City Council. Mr Price said that the report carried the implication that he may have been involved in criminal behaviour. He said that this was distressing to him and damaging to his reputation and his professional activities. Mr Price said that the article should have explained how the compulsory purchase system is used and that he should have been contacted for a response prior to publication of the article.

The Committee:

- concluded that the reference to the deal involving Mr Price was an illustration of the focus of the story – that an MSP wanted to "establish whether public money" had been misused in some deals – and could not readily be interpreted as accusing Mr Price of having acted illegally.
- noted that the BBC, when alerted to the fact that questions had been asked, had contacted Strathclyde Police who confirmed this was the case. The Committee

noted that the accuracy of the figures for the original purchase and subsequent re-sale of this land had not been challenged, and the BBC had returned to this story two months later when it reported that the enquiries had been completed and no further action was to be taken.

- concluded that the BBC must be free to report the detail of any police enquiry provided that it does so within the parameters of the Editorial Guidelines and the law, and that this had been achieved in relation to this article.
- concluded that, in stating the deals were “being looked into” and that Strathclyde Police had confirmed that “inquiries are ongoing”, the article had not suggested that an investigation was underway and the Accuracy guidelines had not been breached in this regard.
- concluded that the focus of the article had been on the request that police and the auditor general look into the land deals, and it was not a requirement of the Accuracy guidelines for the article to have included an explanation of how the compulsory purchase system works and the fact that it was only used as a last resort.
- concluded that readers were unlikely to interpret the section in which Mr Price was named as suggesting criminality on his part, and therefore this did not engage the Fairness Guideline which requires that those criticised should be given a right of reply to allegations of “wrongdoing, iniquity or incompetence”.
- noted the BBC decision to publish the follow-up article two months later in which it was made clear that the police proposed no further action.

The complaint was not upheld.

For the finding in full see pages 21 to 25.

That's Britain, BBC One, 30 November 2011

The complaint relates to a segment of the programme *That's Britain* which covered the issues of train overcrowding and ticket pricing. The complaint was made on behalf of the Association of Train Operating Companies (ATOC). The complainant said that item should have interviewed some satisfied customers or have quoted statistics on overcrowding in the context of overall passenger satisfaction. The complainant said that programme's description of train company profits as “eye watering” lacked context and was unfair. The complainant also said that the programme should not have said that ATOC declined an interview as it had offered to take part in a live studio interview (which the BBC had declined). The complainant said that the item had been inaccurate, lacked impartiality and had been unfair. The complainant also said that the programme had breached the Guidelines on the use of “vox pops”.

The Committee concluded:

- that there was no requirement for the programme to interview satisfied customers or to quote specific statistics, regardless of whether they had been brought to the programme's attention in advance of broadcast, unless failure to do so would have led to unfairness or a lack of due accuracy or due impartiality.

- that the programme had signposted its focus and managed expectations such that the audience would have been entirely clear that the item was about overcrowding and ticket pricing and was not commenting on train travel in general.
- that in this regard the item was well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language and the absence of satisfied voices was neither misleading nor a failure of impartiality.
- that vox pops within the programme did not purport to be a representative sample of passengers, and were merely used to illustrate the frustration felt by some passengers. Taking into account the content of the vox pops used in the programme, the meaning of the relevant section of the Guidelines and the fact the Committee had already decided the item had been duly accurate and impartial in how it reflected the issues of overcrowding and rail fare increases, there had not been a breach of section of the Guidelines on the use of vox pops.
- that ATOC had been given an appropriate right of reply within the programme and the Fairness Guidelines had not been breached with regard to the programme's presentation of the issues of overcrowding and rail fare increases.
- that, while the programme had accurately stated the profit figure of £200 million, without the additional context relating the figure to any of the pertinent facts, such as the number of rail companies, the overall operating costs or the profit margin, the inclusion of the profit figure was meaningless and would not adequately equip the audience to reach an accurate judgement as to whether or not this profit level was "eye-watering". The framing of the sentence clearly gave the impression that it was the programme's view that rail company profits were "eye watering", but there was no evidence to support this, nor any attribution.
- that the statement that the profit was "eye-watering" was not well-sourced nor based on sound evidence and breached the requirements of the Guideline on Accuracy.
- that it was not the programme team's intention to mislead the audience and the Impartiality Guidelines had not been breached in relation to this point.
- that the programme had acted entirely properly in choosing the terms in which it would offer an opportunity for ATOC to be interviewed, and the programme had been honest and straightforward in its dealings with ATOC prior to broadcast.
- that the programme had failed to explain ATOC's absence from the programme in terms that were fair and duly accurate. The programme should have stated more clearly the terms of ATOC's non-appearance and this, coupled with the failure to state clearly that a statement had been provided by ATOC in lieu of an interview, would have left the audience unaware that ATOC had participated in the programme through a statement. The fairness and accuracy guidelines had therefore been breached in this regard.
- that, notwithstanding the individual failures of accuracy and fairness (which primarily related to loose language), the item overall was duly impartial in how it reflected the issues of train overcrowding and ticket prices.

The complaint was upheld in part with regard to Accuracy and Fairness. The complaint was not upheld with regard to Impartiality. The complaint was not upheld with regard to Politics, Public Policy and Polls.

For the finding in full see pages 26 to 38.

Today, BBC Radio 4, 1 October 2011

Complainants said that a *Today* programme report by the Middle East Editor was not presented with due impartiality and that it contained inaccuracies and omissions, the result of which was that the Palestinian case was not properly put. One specific point was accepted by the Editorial Standards Committee for consideration on appeal. This was that the introduction to the *Today* programme report was inaccurate in describing the West Bank as land which the Palestinians “want”. Complainants said that the use of the word “want” in this context failed to reflect the status of the land as Occupied Territory. The Editorial Standards Committee considered the complaints on this point as a consolidated appeal.

The Committee concluded:

- that the sentence following the one which was the subject of the appeal made clear the broader context, that the West Bank is territory that is occupied by Israel.
- that the use of the word “want” in the context of this item did not imply any judgement on the legitimacy of the Palestinian claim to the land, and its use was in the conditional, aspirational sense of the word to imply something not currently in possession, in this case, Palestinian statehood.
- that the *Today* programme had taken the sensitivity of the issue into account and that the content was “well-sourced, based on sound evidence, thoroughly tested and presented in clear, precise language”.

The complaint was not upheld.

For the finding in full see pages 39 to 43.

Appeal Findings

Timewatch: The Most Courageous Raid of WW2, BBC Two, 1 November 2011

1. Background

BBC Two's *Timewatch: The Most Courageous Raid of World War 2*, broadcast in November 2011, and presented by Lord Paddy Ashdown, told the story of the "cockleshell heroes". The programme recounted a raid in which the complainant's relative, Sergeant Samuel Wallace, whilst on a commando mission to blow up German warships, was captured by the Gestapo, interrogated and then executed along with his junior colleague, Marine Bobby Ewart.

The complainant alleged that the programme breached BBC Editorial Guidelines on Accuracy and Impartiality in that it wrongfully implied that Sergeant Wallace cooperated (at least to an extent) with the interrogation whereas the complainant's view was that all available evidence suggested Sergeant Wallace deliberately misled his interrogators and thereby enabled his other comrades who had not been caught to complete their mission.

He also alleged a breach of the BBC's Complaints Process, namely: delay; no action taken in respect of his request for the BBC to remove the programme from BBC iPlayer; no one took ownership of the complaint for much of Stage 1; and also that the BBC referred the complainant to the freelance presenter of the programme (Lord Paddy Ashdown) for a response instead of dealing with the complaint directly.

The complainant also appealed against a decision by the BBC Trust's Head of Editorial Standards not to proceed with his claim of breach of the guidelines on Fairness.

2. The complaint

Stage 1

The complainant contacted BBC Audience Services on 11 November 2011 alleging bias against his deceased relative, Sergeant Samuel Wallace.

A relative had already made a complaint on 7 November 2011 complaining about misleading structuring of the programme and another relative had been in correspondence with the presenter of the programme, Lord Ashdown, on 3 November 2011.

On 12 December 2011 the programme producer replied stating that after much thought and discussion with colleagues, he was of the view that there was "no factual inaccuracy in what was said in the film relating to Samuel Wallace". He stated that any disagreement about the implications of the commentary was of "subjective interpretation" and not "objective fact".

Stage 2

On 23 December 2011 the complainant, representing a niece of Sgt Wallace, complained to the Editorial Complaints Unit (ECU), the second stage of the BBC's complaints procedure, and followed this up with a further letter outlining his complaint dated 9 February 2012. He argued that the records of the interrogation showed that Sgt Wallace "had successfully lied to the Germans ... saved the raid and prevented the discovery of his comrades", but that Lord Ashdown's commentary, together with selective omission of relevant facts (for example that the Germans had found some of the equipment they were

using for the mission), had “impugned the reputation of a man who was killed doing everything he could to protect his comrades”.

The complainant wrote: “Please understand, we are not disputing the accuracy of the facts used in the programme but we believe had all the information been forthcoming in the programme, it would have shown Sgt Wallace in an entirely different light.”

The ECU considered his complaint against the guidelines on accuracy and fairness.

On 28 February 2012 the ECU wrote to the complainant setting out its finding that the guidelines had not been breached although “it would have been better if the programme had included information about the material found by the Germans”. This would have given the audience a fuller sense of the context, but the ECU was not convinced that without this information the audience would have been seriously misled.

The ECU could not see any evidence in the programme that Sgt Wallace behaved in anything less than a courageous or noble manner and it seemed clear that since the other canoes reached their targets, Sgt Wallace could not have given the Germans all the information they needed. There was no discredit in having given some information to the Gestapo, though the ECU agreed that if more context had been given about the interrogation, including the evidence available to the Germans, this would have enabled the audience to form their own view of his intentions in revealing a certain amount of information.

The ECU did not consider it inaccurate for the programme to say that due to “overconfidence” the Germans concluded they had foiled the entire plan – this confidence could have been in part due to what Sgt Wallace told them.

The ECU concluded that the programme did not malign Sgt Wallace’s reputation. It “fairly and accurately described what had happened, albeit without certain details which would have been of great interest to viewers, and which reflected well on Sergeant Wallace’s actions”.

The Complaints Manager and Editorial Standards Adviser, BBC Vision wrote to the complainant on 28 February 2012 to deal with the complaints handling aspects of the case.

He stated that as the programme was based to a large extent on Lord Ashdown’s research he hoped the complainant appreciated that the decision to allow him to correspond directly with the complainant’s family was only taken in the interests of providing a comprehensive response to the complainant.

The adviser added that the complaint made on 11 November 2011 was responded to within the 10-day working target.

He explained that the BBC did not remove items from iPlayer simply because of receiving a complaint. He added that as the BBC considered it was duly accurate there was no need to either remove it or pull any scheduled repeat.

In response to a further email of complaint, the ECU wrote again to the complainant on 29 March 2012 reiterating that it considered there was no breach and explaining that given this was its opinion, there was no requirement to go into detail responding to the complainant’s queries about how the programme was made, for example regarding the cross checking of facts and whether the consultant on the programme had seen a final version before broadcast.

Appeal to the Trust

The complainant appealed to the Trust on 23 April 2012. He raised issues relating to fairness, accuracy and impartiality.

The Trust's Head of Editorial Standards decided that the appropriate guidelines in this case were those relating to accuracy and impartiality and not fairness. The complainant was informed of this by email and told that he could appeal this decision to the Trust if he wished to do so.

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

- The structuring and editing of the facts implied that Sgt Wallace released information to the enemy that endangered the success of the mission and the lives of his colleagues. It allowed the presenter "free rein to use conjecture and speculation to malign the reputation and memory of a very brave and intelligent man".
- In particular the programme omitted the following facts:
 - a. Sgt Wallace originally claimed he and his colleague had been swept off a ship and had swum ashore
 - b. The Germans had found the prisoners' equipment including their canoe, limpet mines, aerial photographs, weapons and food
 - c. The record of interrogation shows the Germans wanted to know how many boats there were: Sgt Wallace must have lied about this since the Germans did not instigate a search for the others.

In relation to the guideline on impartiality, the complainant argued that Lord Ashdown's commentary regarding the complainant's great uncle was his "personal interpretation of events and ... bias", and made it appear that Sgt Wallace had "spilled his guts" whereas in fact the evidence suggests he deliberately misled the Germans into thinking they had captured all the members of the mission.

3. Applicable Editorial Guidelines

The following sections of the 2010 Editorial Guidelines were considered in relation to this complaint:

Section 3: Accuracy

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

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

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

3.2.3 The BBC must not knowingly and materially mislead its audiences.

Section 4: Impartiality

4.4.29 The BBC has a tradition of allowing a wide range of individuals, groups or organisations to offer a personal view or opinion, express a belief, or advance a contentious argument in its output. This can range from the outright expression of highly partial views by a campaigner, to the opinion of a specialist or professional including an academic or scientist, to views expressed through contributions from our audiences. All of

these can add to the public understanding and debate, especially when they allow our audience to hear fresh and original perspectives on familiar issues.

Such personal view content must be clearly signposted to audiences in advance.

The Guideline at Section 6 – Fairness, Contributors and Consent was also applicable to the question of whether to uphold the appeal against the decision of the Head of Editorial Standards not to proceed with the complaint in relation to Fairness.

Section 19: Accountability

19.4.1 Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect.

4. The Committee's decision

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

In reaching its decisions the Committee took full account of all of the available evidence, including (but not limited to) the Editorial Adviser's report, and subsequent submissions from the complainant and the programme team. In relation to the appeal against the Trust Unit's decision not to proceed with the case to the ESC on fairness, the Committee considered the complainant's case and the email which had been written to him setting out the Trust Unit's decision.

Fairness

First the Committee considered the appeal against the Trust Unit's decision on fairness. It noted the complainant's argument that Sgt Wallace's niece and her family had suffered because her deceased relative had been maligned, and it considered the argument presented by the Trust Unit that the fairness guidelines were not engaged. The Committee noted that the Trust Unit had explained that the Trust does not take fairness complaints except from those with a close direct interest.

With regard to the fact that the complaint related to fairness in respect of a deceased person, the Committee noted that the Trust Unit had explained that the Broadcasting Act sets out that fairness complaints will not be entertained "...on an occasion more than five years after the death of the person affected" (allowing for particular circumstances). The Committee agreed that, while the Broadcasting Act does not directly prescribe the way the BBC would deal with such complaints, it is a useful benchmark. The Committee agreed with the Trust Unit's reasoning that the ability to apply fairness guidelines after a great length of time becomes very difficult as those with direct knowledge are no longer available.

The Committee also noted that the Trust Unit had explained to the complainant that the Scottish Government had recently considered whether the law on defamation should be extended to allow a relevant party (e.g. a close relative) to bring an action for defamation of a recently deceased person, but decided against doing so, noting that this had been considered in England and Wales but that it was felt that there were insurmountable difficulties involved in: establishing the truth; obtaining documents; the limitation period; and in reconciling the traditional notion of the hurt feelings of the defamed person being at the heart of a defamation action with the idea of creating a cause of action for a person who is no longer alive.

The Committee agreed that, given the considerations above, it was not appropriate for the Trust to consider this complaint under the BBC's Fairness guideline.

Accuracy and Impartiality

The Committee then considered whether the Accuracy guideline had been breached in the light of the complainant's allegations that, by the selective use of only certain facts and the omission of key facts, the programme implied that Sgt Wallace had cooperated at least to a degree with the Germans' interrogation.

In particular the Committee considered whether the BBC had demonstrated that the content was:

- well sourced
- based on sound evidence
- thoroughly tested
- presented in clear, precise language
- honest and open about what it didn't know
- avoided unfounded speculation.

The Committee then considered whether the BBC knowingly and materially misled its audiences with its content. In particular did it:

- distort known facts
- present invented material as fact
- otherwise undermine the audience's trust in the BBC's content?

The Committee considered the relevant section of the programme.

Having explained that Sgt Wallace and his colleague were captured by the Gestapo, the programme stated:

"Although young Bobby Ewart refused to talk, Sergeant Wallace told them rather more than just name, rank and number. By 2am on the 9th December 1942 German supreme headquarters in Berlin knew almost everything about Hasler's raid, and they were furious. They knew that the group had been landed by submarine; they knew that they were from Combined Operations; and they knew that their mission was to travel up the Gironde estuary and attach limpet mines to German ships in Bordeaux. But what they didn't know, thanks to German overconfidence, was that this was a raid still in progress. Hasler and his men were out there somewhere: armed, dangerous, determined to press home their attack. The German authorities were so busy dodging blame from Berlin that they forgot to protect their ships in Bordeaux"

The Committee then noted the German record of what took place, which was set out in correspondence. According to this record, Sgt Wallace initially told the Germans that he and Ewart had been washed ashore from a shipwreck. However, the Germans found the prisoners' canoe and its contents, including limpet mines and detailed maps of the Gironde as far as Bordeaux, and they knew from this that their story was not true. Interrogation of the prisoners was recommenced and execution was postponed.

The Committee considered the complainant's argument that the line "[the Germans] knew almost everything" suggested that the reason they knew was because of the interrogation, whereas in fact they had found the canoe and other materials.

The Committee noted the ECU's finding that "strictly speaking the facts as stated in the script regarding the interrogation were accurate", although "his intention" in giving the information "could certainly be argued", noting that the ECU had accepted that the programme "did not mention [the] fact" that part of the reason they knew "almost everything" was because of the equipment they had found – and its comment that "it would have been better" if the programme had included the information about this additional circumstantial evidence.

The Committee agreed that the facts as set out in the programme had been accurate as far as they went. The Committee noted, however, that the programme, while stating that Sgt Wallace had provided "rather more than his name, rank and number" had made no mention of the discovery of Sgt Wallace's canoe and equipment, which included limpet mines and maps of the Gironde. The Committee considered that the discovery of this equipment was a significant factor in the programme's statement that "By 2am on the 9th December 1942 German supreme headquarters in Berlin knew almost everything about Hasler's raid." The Committee's view was that in this section the programme did not use "clear, precise language" and was therefore in breach of the Accuracy guideline. The Committee also noted the complainant's argument that it was inaccurate for the programme to state that due to German "overconfidence" they did not carry out a search for the other raiders, as the records showed that it was due to them being misled by Sgt Wallace.

The Committee considered the relevant section of the script:

"But what they didn't know, thanks to German overconfidence, was that this was a raid still in progress. Hasler and his men were out there somewhere: armed, dangerous, determined to press home their attack. The German authorities were so busy dodging blame from Berlin that they forgot to protect their ships in Bordeaux"

The Committee noted that the reason given in the script for the lack of further action by the Germans was that "German authorities were so busy dodging blame from Berlin that they forgot to protect their ships in Bordeaux."

The Committee considered that the impression given to viewers by the programme would be that the failure to take any further action was unrelated to the information given by Sgt Wallace during his interrogation. The Committee considered, however, that Sgt Wallace must have misled the Germans with regard to the number of participants in the raid and that this would have played at least some role in the decision of the Germans to take no further action. The Committee considered that this significantly underplayed the misinformation which Sgt Wallace must have provided. The Committee concluded that this section had not used "clear, precise language" and was therefore in breach of the Accuracy guideline.

While the Committee had found that the programme had been in breach of the Accuracy guidelines in not providing viewers with a comprehensive picture of events in relation to the interrogation of Sgt Wallace and failure of the Germans to search for further raiders, it did not conclude that the programme had knowingly misled its audience.

The Committee then turned to consider whether the Impartiality guideline had been breached, namely the complainant's allegation that Lord Ashdown's commentary was his personal interpretation of events and was biased.

In particular the Committee considered:

- whether the programme represented the presenter's "personal view" and if so,

- whether such personal view content was clearly signposted to the audience in advance.

The complainant argued that the BBC gave the presenter, Lord Ashdown,

“complete freedom ... to slant and bias the programme to promote his forthcoming book by creating a distortion of the known facts”.

The Committee noted that Lord Ashdown was used as an expert presenter on this programme, having been a member of HM Armed Forces and having conducted research on this subject for his own book.

The Committee noted that the programme began with Lord Ashdown setting the scene for the night of the raid in December 1942. It was not introduced as a personal view and did not use the type of language and phrases often adopted in programmes where a personal view is being put forward. The Committee noted that from this purely factual introduction, the programme continued in the same vein, describing the events as they unfolded.

The Committee noted one section in which Lord Ashdown related his experience of having met Blondie Hasler (a distinguished Royal Marines officer in the Second World War who had led the Bordeaux raid) on a train, in which he described Hasler as a personal hero. The Committee considered that this section was more in the nature of an anecdote and not an expression of a personal view on the subject of the programme. The Committee also noted another section in which Lord Ashdown described the commandos waiting on board ship for their final orders. The Committee noted that Lord Ashdown described this time as, in his experience, the very worst moment of an operation. Again, the Committee considered that this could not be considered as an expression of a personal view on the subject of the programme for the purposes of the impartiality guidelines.

Taking into account the two sections described above, the Committee could see no evidence in the programme to suggest that it was presenting a personal view, and it noted that the complainant had not suggested that the facts which had been presented in the programme were incorrect. The Committee agreed that, while the programme was not duly accurate as a result of the omission of information regarding the Germans’ discovery of equipment, there was no evidence to conclude that this was the result of bias. The Committee agreed that, as the programme was not presented as a personal view but rather a factual account of events, there was no case to be answered in terms of signposting such views.

The Committee did not consider that the programme represented Lord Ashdown’s “personal view” and it therefore concluded that the guideline on Impartiality had not been breached.

Complaint handling

The Committee considered the four matters which the complainant raised with regard to the handling of the complaint.

First, it considered his argument that the programme should have been withdrawn from BBC iPlayer following receipt of the complaint, and the ECU’s argument that it is not BBC policy to withdraw items in these circumstances. The Committee agreed with the ECU that the receipt of a complaint is not grounds on its own to automatically remove a programme from iPlayer.

Second, the Committee turned to the question of delay. It considered the correspondence in this case and in particular the letter to the Trust Unit of 6 June 2012 from the Complaints Manager and Editorial Standards Adviser, BBC Vision, which set out clearly the communication timeline. The Committee noted that this complainant first contacted the

BBC on 11 November 2011, though his son contacted the BBC on 7 November and another relative was in communication with the presenter, Lord Ashdown, on 3-4 November 2011. The Committee noted that the programme producer telephoned and spoke to the wife of the complainant's son on 9 November – following receipt of his complaint on 7 November 2011. The Committee noted that, following receipt of this complainant's letter on 11 November, the producer telephoned him on 13 November 2011 and wrote on the 15 November 2011 stating that a detailed reply would be sent to him from Lord Ashdown. The Committee noted that the Complaints Manager stated that the producer and Lord Ashdown communicated with the respondent over the course of several telephone calls and emails. The BBC's substantive decision at Stage 1 was dated 12 December 2011.

The Committee noted that the BBC's Complaints process states:

"We email or post most replies to complaints within 10 working days of receiving them, although this also depends on their nature and how many we have."

The Committee noted that in this case there might have been some confusion at times at Stage 1 because several members of the complainant's extended family were communicating with the BBC and with Lord Ashdown about the programme, and they passed some correspondence between themselves. However, the Committee noted that the BBC had in fact apologised for any confusion it had caused along the way and, notwithstanding the multiple correspondence, the Committee decided that this complainant received a prompt response and there had not been a delay.

Third, the Committee considered the complainant's argument that no one at the BBC took ownership of the complaint at Stage 1. The Committee considered the correspondence trail and noted that a number of telephone calls were made to the complainant. The Committee considered that there might have been some confusion arising from the complainant being told that, due to the producer's illness, the matter would be given to someone else. In the event this was not done. On reviewing the correspondence, the Committee accepted the BBC's argument that at all times the producer was aware of the progress of the complaint and dealt with it appropriately, therefore the Committee did not uphold this element of the handling complaint.

Finally, the Committee considered the complainant's argument that the complaint was referred to Lord Ashdown instead of being dealt with by the BBC. The Committee noted that it is the BBC's responsibility to handle all complaints made to it about its output. The Committee noted that it was unusual for an external presenter to be an expert on the subject and for a complaint to be passed to him directly for a response. The Committee accepted the BBC's argument that even though the matter was passed to Lord Ashdown for a detailed response, the BBC at all times acknowledged that the ultimate responsibility for responding to the complaint remained with them.

The Committee noted that the correspondence demonstrated that Lord Ashdown had been exemplary in the way he had dealt with the complainant and, indeed, with the other members of the family who had corresponded with him.

Finding: Upheld with regard to Accuracy. Not upheld with regard to Impartiality and the handling of the complaint.

Payments to MP for appearances on *This Week*

1. Background

Diane Abbott was elected to Parliament in 1987. In October of 2010 she was appointed to Labour's front bench as Shadow Minister for Public Health.

In the edition of *This Week* broadcast on 16 December 2010 Ms Abbott featured on the programme and was captioned, "Former *This Week* presenter", she was to feature in a further seven programmes between that date and March 2012.

The BBC describes *This Week* as "A political review of the week presented by Andrew Neil". It is aired 35 times a year on Thursday nights, initially on BBC One, live from 11.35pm from the BBC's Westminster studio.

The first episode was screened in 2003 and, according to the programme's website, "most shows have seen Andrew Neil host the panel of Michael Portillo and Diane Abbott, although she left the show in 2010 after joining the shadow cabinet but still returns for occasional shows".

Since becoming Shadow Minister for Public Health in October 2010 Ms Abbott has appeared eight times (as of 10 July 2012) and, according to the MPs' Register of Financial Interests, she declared payments for appearances on *This Week* totalling £6,712 in that period.

Ms Abbott's role on the programme consists initially of responding to questions from the presenter – Andrew Neil – about the week's political events and then engaging in conversation with her fellow panellist (usually Michael Portillo). She remains on set for the rest of the programme and contributes to interviews with other guests, although the interviews are always initiated by the presenter.

2. The complaint

The complainant said that it was wrong for Diane Abbott MP, as a Labour front bench spokesperson, to profit financially, courtesy of the licence fee, for expressing what he said were political opinions and discussing her party's policy on BBC One's *This Week*.

Stage 1

The complainant wrote to the BBC Director-General on 19 January 2012 noting that Diane Abbott had received five payments of £839 and one of £869 for appearing on *This Week* since becoming a front bench spokesperson. He noted that whilst he recognised that the BBC often paid MPs "disturbance fees" for the time and inconvenience involved in making a broadcast appearance, he did not accept that the level of payments being made to Ms Abbott could be described as such, and therefore claimed that it breached the Editorial Guidelines which state:

"We should not normally pay MPs, or others clearly identified as representing political parties, for appearances or other contributions to any BBC output in which they are speaking as a member of their party or expressing political views."

The Director-General sent a reply on 1 February 2012 in which he passed on the responses from the producers of the programme. They said that whilst the BBC's Editorial Guidelines did state that BBC news programmes should not normally pay MPs to appear,

they regarded *This Week* as the sort of exception that was covered by the word "normally". They said that it was "not a traditional political programme". Guests are invited who would not normally participate in political discussion, such as celebrities or business leaders, and although Diane Abbott and Michael Portillo were asked to express political opinions, they also have a co-presenter role, interviewing these other guests. The reply went on to state that Diane Abbott did not appear in either her front bench role or as the MP for Hackney North and Stoke Newington. For these reasons the BBC felt it was reasonable to pay her a fee since she was required to prepare for interviews on subjects outside her front bench responsibilities; she also had to be available for broadcast at 11:30pm on a Thursday evening.

The complainant responded on 6 February 2012 expressing his unhappiness with the reply, saying that he believed it was important that the BBC was seen to be spending licence fee payers' money "carefully, wisely, and above all according to the BBC's own editorial guidelines". He challenged the response he had received on three grounds.

First, he took issue with the producers' contention that Ms Abbott was a presenter rather than a guest, since she did not conduct any interviews per se but only joined in those led off by the presenter.

Second, he suggested that the producers were being allowed "to flout the BBC's own editorial policy" expressing surprise at their assertion that *This Week* was "not a normal political programme".

Third, given the statement by the producers that Ms Abbott appears neither in her front bench nor constituency role, he asked, "in what capacity does she appear?" He suggested that Ms Abbott would not appear on the programme so regularly if she were not an MP or, as in the case of her co-pundit Michael Portillo, a former MP. He concluded by pointing out that since he had written his original letter Ms Abbott had registered another payment in the MPs' register of financial interests for appearing on *This Week*, bringing her earnings from this source to £6,000 in the 15 months since joining Labour's front bench.

Stage 2

The Director-General responded on 15 February 2012 saying that since the complainant had not been satisfied with the explanations he had received from the producers, and because a possible breach of the Editorial Guidelines was involved, he had asked the BBC's Director of Editorial Policy and Standards to respond. The Director of Editorial Policy and Standards wrote that the basic principle was: "We pay MPs when what they do for us cannot be counted as being part of their day-to-day job." By this he meant that when Ms Abbott was appearing on the *Today* programme, for example, to talk about an item from that day's news, she would not get paid. When she appeared on a programme such as *Any Questions* or *Question Time*, which involved her giving up time to travel to the recording etc. she would be paid a small fee in compensation for the disturbance involved. If she were to present a documentary radio programme, or series, as some MPs have done, she would be paid more, which as well as causing her more disturbance might also involve more significant preparatory work. So, "... when she helps to present and acts as a regular pundit on a programme, such as *This Week*, she will be paid accordingly, in the same way as pundits on other programmes are". He concluded by saying that he was satisfied that the payments made to Ms Abbot were fully in accordance with the BBC's Editorial Guidelines. The Director-General advised the complainant that if this response was not satisfactory he could appeal to the BBC Trust's Editorial Standards Committee (ESC).

Appeal to the BBC Trust

The complainant appealed to the Trust, stating that it was wrong for Diane Abbott MP, as a shadow minister, to profit financially (courtesy of the licence fee) for expressing political opinions and discussing her party's policy on BBC One's *This Week*.

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

The Head of Editorial Standards for the BBC Trust considered that none of the points raised in the complaint would have a reasonable prospect of success were they to proceed to appeal. This was because, based on the explanations provided by the Executive to the complainant, the Head of Editorial Standards took the view that in the circumstances, the payment of a fee above and beyond that paid to, for example, political panellists, appeared to be justified. The Head of Editorial Standards therefore believed there was no apparent breach of the Editorial Guidelines and the appeal had no reasonable prospect of success before the ESC. The complainant was advised in writing of the Head of Editorial Standards' decision and was provided with the detailed reasons for her decision. The complainant was given the opportunity to challenge the decision.

The complainant did challenge the decision and this challenge was considered by the ESC on 3 May 2012. At the meeting the ESC agreed to proceed to hear the complaint on appeal.

3. Applicable Editorial Standards

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

Section 10: Politics, Public Policy and Polls

Payment to MPs

10.4.7 We should not normally pay MPs, or others clearly identified as representing political parties, for appearances or other contributions to any BBC output in which they are speaking as a member of their party or expressing political views. They can, where appropriate, be paid a limited and realistic disturbance fee and/or any reimbursement for genuine expenses.

10.4.8 They may be paid for contributions to non-political output, where they are appearing on the basis of their expertise outside politics or of their celebrity, and are not taking part as a member of their party or expressing political views.

Active politicians should not normally be paid for an appearance on, or contribution to, BBC News output. The extent to which a contributor is considered an active politician may be influenced in each case by a combination of factors including, for example, the type of programme or other content, the nature of the contribution, the contributor's political activity or the capacity in which they appear. Further advice should be sought from Chief Adviser Politics.

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, comments on the report from the complainant, and the responses from the BBC Executive.

The Committee first considered the number of times Ms Abbott had appeared on *This Week* since taking up her front bench position in 2010.

The Committee noted the Executive's response to the appeal, which stated that the Director of Editorial Policy and Standards had not been aware of the frequency of Ms Abbott's appearances on the programme when he gave his response to the Director-General's office. The Executive said that he had been under the impression that he was defending the earlier payments made to Ms Abbott as a backbench MP. Hence, they now agreed that in her current role, in which she had less licence to depart from the party line, she had appeared too often and it was only appropriate for her to appear, "once or twice a year on a special occasion" and that in future she would be paid a disturbance, rather than an appearance, fee. The Executive also advised the Committee that, whilst it had been decided that Ms Abbott's appearances should only be "occasional" following her appointment to the front bench, "With hindsight the Head of Political Programmes and Executive Editor, *This Week*, think they should also have reviewed the size of payment made to her at that point and they also accept that she has appeared too often since becoming a shadow minister."

The Committee noted that the Executive had not been aware that Ms Abbott had appeared as many as 8 times since 2010. The Committee was surprised that the extent of Ms Abbott's appearances on the programme had not come to light in the course of the Executive's response to the complaint at stages 1 or 2 of the process, before it came to the Trust on appeal. The Committee noted that, having been made aware of the number of appearances in question, the Executive accepted that Ms Abbott had appeared on the programme too many times since becoming a shadow minister, and that her appearances should have been limited to once or twice a year. The Committee agreed that this should have been the case and welcomed the Executive's decision to proceed on this basis in future.

The Committee then considered the complainant's allegation that, as a politician, Ms Abbott should not have been paid beyond a reimbursement of costs incurred in taking part in the programme.

The Committee noted the Executive's response to the appeal on this point. The Executive maintained that the payments did not represent a breach of the Editorial Guidelines because of Ms Abbott's, "hybrid role as a co-presenter and a panellist" which made it justifiable to pay her an appearance, as opposed to a disturbance, fee. "She was being paid to perform a role outside of her normal duties as an MP, bringing her own presentational skills and unique on-air presence. The work involved considerable preparation and unsocial hours mid-week", the Executive stated. The Executive argued that the justification for this could be found in the guideline's use of the word "normally" when referring to the payment of MPs. The Executive noted it allowed for exceptions, and this was one. The Executive also noted that serving politicians appear frequently on BBC programmes and the vast majority are not paid; however, they justified Ms Abbott's payments by saying, "We pay MPs when what they do cannot be counted as being part of their day-to-day job."

The Committee noted that in the course of the Trust's investigation into the complaint the BBC had acknowledged that, in the circumstances, it had been wrong for Ms Abbott to have received such substantial appearance fees since taking up her position on the shadow front bench. The Committee noted, however, that the Executive did not accept that there had been a breach of the Editorial Guidelines as it argued that the word "normally" allows for exceptions to be made. The Committee considered that the BBC's reliance on the word "normally" in the Guideline was incorrect and that the more important word was "not", as in "We should not normally pay MPs" (emphasis added). The Committee accepted that when MPs are asked to contribute to programmes on non-political subjects, or where they are appearing on the basis of their expertise outside politics or of their celebrity, the Guidelines do allow for an appearance fee; however, the Committee concluded that this was not the case with regard to Ms Abbott's appearances on *This Week*. The Committee noted that the BBC, in response to the appeal, had said that any future payments to Ms Abbott for her appearances on *This Week* would be based on a realistic disturbance fee. The Committee agreed that the proper application of the Guidelines to Ms Abbott's appearances since taking her position on the front bench was the one which the Executive had chosen to adopt in response to the appeal to the BBC Trust. The Committee agreed that payment of a realistic disturbance fee would have been appropriate under the Guidelines; however, the payment of such substantial appearance fees to Ms Abbott since she took up her front bench position in 2010 was a breach of the Guidelines.

Finding: Upheld

“Police asked to probe commonwealth games land deals”, BBC News Online

1. Background

A BBC News website article⁴ reported that a member of the Scottish Parliament had asked Strathclyde Police and the Auditor General for Scotland to examine a number of deals in which land had been purchased for use during the 2014 Commonwealth Games, but where compulsory purchase powers had not been used.

2. The complaint

Stage 1

The complainant wrote initially to BBC Scotland, on behalf of her client, Mr Charles Price, saying that the report created the clear implication that he may have been involved in criminal behaviour and this was both distressing and damaging to him, his reputation and his professional activities. The complainant said that at no time had the BBC contacted him to check the story.

The Principal Solicitor for BBC Scotland replied saying that the BBC did not accept there was any implication in the report that the client may have been involved in criminal activity. The central issue concerned stewardship of public money by Glasgow City Council, and there was no allegation made to which a right of reply would be appropriate.

The complainant wrote again to stress that since the report had stated that the police were investigating the sale of land to Glasgow City Council, this clearly implied that the investigation was in respect of criminal activity, which was not the case. Had her client been contacted, he could have explained the circumstances and how the land had increased in value since he had purchased it.

Stage 2

The Editorial Complaints Unit (ECU) investigated the complainant's belief that there had been a clear inference that her client may have been involved in criminal activity, and thus the report had breached the BBC Editorial Guidelines which required that all output must be well sourced, based on sound evidence and thoroughly tested.

The complainant had stressed again to the ECU that there was no police investigation into the sale of land, and that the MSP had confirmed that he had not intended to imply that criminal activity had been involved.

The ECU ruling agreed with the original response that the report highlighted that the fact at issue had been the failure of the Council to use compulsory purchase powers to acquire the land and that the focus of the investigation was Council activity rather than the named individuals. It did not accept that readers of the report would be likely to have taken from it that criminal behaviour must have taken place.

If the complainant's argument in this respect was upheld, the media would be prevented from reporting the fact that the police were investigating any criminal allegations for fear

⁴ <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-16411195>

that this would give a possibly unfair impression that criminal behaviour must have been involved.

The Complaints Director explained that the outcome of the police investigation to the effect that no action would be taken had been clearly and unambiguously reported by the BBC. Since there had been no suggestion in the original report of wrongdoing, there was no requirement for a right of reply.

The complainant rejected the arguments put forward by the ECU, agreeing that the BBC must be free to report the fact of a police investigation into a criminal allegation, but stating that in this case there were no criminal allegations and no police investigation. The report was therefore both inaccurate and lacked the context which should have laid out that compulsory purchase procedures were only ever used as a last resort.

The ECU did not agree and so did not uphold the complaint.

Stage 3 – Appeal to the BBC Trust

The complainant contacted the BBC Trust to appeal against the ECU's decision. The complainant argued that if the BBC's position was that the focus of the article was Glasgow City Council, it would have been possible to report it without naming the individual involved. The complainant said that the article had not made it clear that the complaint had been lodged three months previously, and the ordinary reader would have concluded that the individual was linked to criminal activity.

3. Applicable Editorial Guidelines

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.

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.

Section 6: Fairness

6.1 The BBC strives to be fair to all - fair to those our output is about, fair to contributors, and fair to our audiences. BBC content should be based on respect, openness and straight dealing. We also have an obligation under the Ofcom Broadcasting Code to "avoid unjust or unfair treatment of individuals or organisations in programmes". (Rule 7.1, Ofcom Broadcasting Code)

6.4.25 When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a "right of reply", that is, given a fair opportunity to respond to the allegations.

4. The Committee's decision

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

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

Regarding the complainant's allegation that by including a reference to one of the deals involving Mr Price, the article implied criminality on his part, the Committee gave consideration to the actual wording of the article, noting in particular the beginning of the article:

Police asked to probe Commonwealth Games land deals

Multi-million pound land deals linked to the 2014 Commonwealth Games in Glasgow are to be looked at by police.

The move follows a complaint by SNP MSP James Dornan, who represents the city's Cathcart constituency.

He wants to establish whether public money was misused in some deals.

The Committee noted that the second sentence in the main article encapsulated the focus of the story – that the MSP wanted to “establish whether public money” had been misused in some deals.

The Committee considered that including the deal involving Mr Price was an illustration to this end, and could not readily be interpreted as accusing him of having acted illegally. The story had clearly laid out that the police were looking into these deals, and it had included a quote from the MSP that council taxpayers “have to be confident that public money is spent wisely”.

The Committee noted that the BBC had contacted Strathclyde Police when alerted to the fact that questions had been asked, and the force had confirmed this was the case.

The Committee noted that the accuracy of the figures for the original purchase and subsequent re-sale of this land had not been challenged. The Committee also noted that the BBC had returned to this story two months later when it reported that the enquiries had been completed and no further action was to be taken.

The Committee considered that the BBC – in common with other news organisations – must be free to report the detail of any police enquiry provided that it does so within the parameters of the Guidelines and the law. The Committee agreed that this had been achieved in relation to the article in question. The Committee therefore concluded that the Guidelines on Accuracy had not been breached in this regard.

Regarding the complainant’s suggestion that the BBC had been inaccurate because there was in fact no investigation, the Committee noted the explanation from Strathclyde Police as to how they routinely describe work such as this, when answering questions from the media. Strathclyde Police explained that enquiries are commenced in order to establish if there is any evidence that would trigger an investigation. If not the matter is closed. Enquiries precede any investigation.

The Committee noted that the BBC had used the phrase that the deals were “to be looked at” and that Strathclyde Police had confirmed that “enquiries are ongoing”. The Committee noted that the article had not suggested that an investigation was underway. The Committee therefore concluded that the Guidelines on Accuracy had not been breached in this regard.

The Committee also looked at the complainant’s allegation that in order for the article to have conformed to the Guidelines, an explanation should have been included to make it clear that compulsory purchase procedures were only used as a last resort, and the allegation that, consequently, the article lacked context.

The Committee noted that the focus of the article had been on the request that police and the Auditor General look into the land deals – in effect the conduct of Glasgow City Council. The article had pointed out that compulsory purchase powers had been granted in the case of land acquisitions for the Commonwealth Games but that the council had chosen not to use them. The Committee considered that, since this was the matter that was the subject of police enquiries, the article was only required to state the facts that

were known and had been confirmed. It was not a requirement of the Accuracy Guidelines to have included an explanation of how the system worked.

The Committee then considered the complainant's assertion that the Guidelines required the BBC to have put the detail of the story to Mr Price and to have published a comment. The Committee noted that, had the BBC published an allegation of wrongdoing against Mr Price, then under the Fairness Guideline there would have been an obligation to have sought a comment from him. However, the Committee agreed that readers were unlikely to interpret the section in which Mr Price was named as suggesting criminality on his part. Rather, it was a statement of the facts of the police enquiries.

The Committee agreed that this did not engage the Fairness Guideline which requires that those criticised should be given a right of reply to allegations of "wrongdoing, iniquity or incompetence". The Committee noted again the BBC decision to publish the follow-up article two months later in which it was made clear that the police proposed no further action.

Finding: Not upheld.

***That's Britain*, BBC One, 30 November 2011**

1. Background

That's Britain is a prime-time current affairs/consumer programme; it was first broadcast in November 2011. *That's Britain* is described on the BBC website as:

...a warm-hearted studio show about the things in modern life that drive us around the bend – from road works to hospital parking charges, and from littering to overcrowded trains ... the show reveals how Britain works and attempts to make life a little better for everyone in the UK – or at least have fun trying.

The segment which is the subject of this complaint was shown in the second episode of the series. It comprised a six-minute location-based filmed report, followed by a three-minute studio interview with the reporter, Grainne Seoige.

2. The complaint

This is an appeal by the Association of Train Operating Companies (ATOC) concerning the impartiality and fairness with which a segment on the programme reflected the issues of train overcrowding and ticket pricing.

Stage 1

The chairman of ATOC wrote to the Chairman of the BBC on 26 October 2011, before the item was broadcast. The letter expressed concern about research being carried out for the BBC focusing on the public's experience of travelling by rail that it said was:

"...targeting dissatisfied passengers rather than a more representative and impartial sample of rail travellers".

ATOC said the item appeared to be scheduled to coincide with a rise in season tickets prices and pointed out that the increases were a decision taken by the government and not train companies.

The letter referred to a recent survey by the independent passenger watchdog, Passenger Focus, which said that passenger satisfaction overall had reached an all-time high of 84%. The letter conceded there were aspects of rail travel which the public did not like, but said it would be extremely disappointing if the BBC chose to focus on the 6% of passengers who had expressed dissatisfaction in the Passenger Focus survey.

The letter was passed to the Director-General for a response. Quoting the producers of *That's Britain*, the Director-General said the intention was to transmit a short film about the issue of train overcrowding and rail fares. The response highlighted results, also from the recent Passenger Focus survey, which revealed that 33% of commuters were unhappy with overcrowding on their journeys. The programme makers said they had spoken to a number of passengers, had evidence of overcrowding on a number of trains and had requested interviews with three train operators as well as ATOC. The reply noted that the programme had interviewed the Transport Secretary, Theresa Villiers.

Following the broadcast of the item, ATOC wrote to the Director-General on 13 December 2011 raising three specific points:

- The item should have interviewed some satisfied customers or least have quoted the statistics on overcrowding in the context of overall passenger satisfaction with rail travel
- The item made reference to “eye-watering” profits of £200m the previous year. There are 19 franchised train companies and average profit is about 3% of turnover. How can the phrase be justified?
- The programme should not have said that ATOC declined an interview. ATOC had offered to take part in a studio interview but were not taken up on the offer. Stating ATOC had refused suggested the organisation had something to hide.

The Director-General responded on 18 January 2012. He quoted a response he had received from the producers of the programme.

- ATOC had been offered multiple dates for an interview for inclusion in the film but declined and opted to provide a statement instead; an email was received post-transmission thanking the producers for including so much of the statement in the programme
- ATOC’s offer of a live interview was declined because at that stage the programme format did not allow for live studio interviews. Studio interviews only became part of the format from show three onwards
- The average commuter who was now being asked to pay even more for their ticket would likely agree that the phrase “eye-watering” to describe train companies’ profits was an apt description
- The programme was open and transparent in all its dealings with ATOC and the subject covered was a legitimate and developing story.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU), the second stage of the BBC complaints process, on 6 February 2012. The letter reiterated the points that had been made in earlier correspondence, adding the following points:

- The statement that ATOC declined to be interviewed contradicted what the programme knew to be true, that in fact it was keen to discuss on air the issues that had been raised; the programme had misled the audience and had not been fair to ATOC
- The programme stated that passengers would have found the profits “eye-watering” yet no passenger was quoted or attributed making the point; it was a purely subjective description that lacked justification.

ATOC supplied copies of its email correspondence with the programme makers concerning requests for an interview, as well as recollections of telephone conversations between ATOC staff and the programme makers.

The ECU issued its finding on 13 March 2012. It did not uphold any of the complainant’s points. It concluded:

- The programme did not purport to show the experience of all rail travellers, but only those affected by overcrowding; it focussed on specific named routes and

avoided sweeping statements which might have suggested the problem affected all travellers

- Passenger Focus results relating to views on overcrowding and value for money show levels of dissatisfaction which make both legitimate areas of concern for a consumer affairs programme
- The programme included sufficient additional context on the reasons behind train overcrowding, including comments from train operators; the programme noted the government's responsibilities and the challenges facing train companies
- The profits may be judged to be "reasonably modest", but as the programme correctly stated the actual figure of £200m, the audience would not necessarily have been misled; while it was a somewhat subjective judgement the audience were supplied with the information to make up their own minds
- The Editorial Guidelines are explicit about not surrendering editorial control to contributors who try to impose conditions; in effect this means that programme makers are entitled to retain the right to decide on the terms and format of an interview
- There is clear evidence from the correspondence that ATOC were aware that a live interview was not open to them, so in practical terms it was acceptable to state that they had declined to be interviewed
- The views of ATOC were included in the programme, although it would have been better if the programme had explicitly attributed responses to ATOC rather than to the "train operating companies".

Stage 3

The complainant wrote to the BBC Trust on 26 March 2012 reinforcing the earlier points and adding the following comments.

On the issue of how the item was framed:

- Overcrowding is an issue, but it should have been put into context and the programme should not have focused solely on dissatisfied customers
- Christian Wolmar is a known opponent of privatisation and should not be cited as an example of putting the point of view of train companies
- The programme breached the Guideline that stipulates it should be made clear "vox pops only represent some aspects of an argument".

On the issue of "eye-watering" profits, the complainant asked how the ECU could state it was "not an entirely neutral way to describe" profits yet not accept that viewers would have been misled.

The complainant also asked how it is not misleading to tell viewers that ATOC declined to be interviewed given that the programme makers have confirmed that ATOC offered to attend the live broadcast for a studio interview.

3. Applicable Editorial Standards

Section 3: Accuracy

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

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

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

Section 4: Impartiality

4.1 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...

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.

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

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

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

4.4.8 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.

Section 6: Fairness, Contributors and Consent

6.2.1 We will be open, honest, straightforward and fair in our dealing with contributors and audiences unless there is a clear public interest in doing otherwise...

6.2.3 When our output contains allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation, those criticised should normally have a right of reply, unless there is an editorial justification to proceed without it.

6.4.13 Contributors sometimes try to impose conditions on us before agreeing to take part. We must not surrender editorial control.

6.4.28 When our audience might reasonably expect to hear counter arguments or where an individual, viewpoint or organisation is not represented it may be appropriate to explain the absence, particularly if it would be unfair to the missing contributor not to do so. This should be done in terms that are fair.

Section 10: Politics, Public Policy and Polls

10.1 Introduction

The principles relating to our political impartiality are set out in the Agreement accompanying the BBC Charter and are central to our coverage of politics and public policy. Over an appropriate timeframe we must aim to give due weight and prominence to all the main strands of argument and to all the main parties ... The Guidelines in this section should be read in conjunction with Section 4 Impartiality.

Opinion polls, surveys, questionnaires, phone and online votes are useful and fruitful ways of listening to our audiences. However, when we report them, the audience must be able to trust that the research – and our reporting of it – is robust. To avoid misleading the audience, we should be rigorous in using precise language and in our scrutiny of the methodology...

This section of the Guidelines is intended to help those making output for the BBC, who wish to include polls, surveys and questionnaires in their content, to do so appropriately, meeting the requirements of due accuracy and impartiality.

Vox Pops

10.4.47 We should always make it clear that vox pops only represent some aspects of an argument and do not give any indication of the weight or breadth of opinion.

Vox pops on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area, must be edited to accurately represent those whose opinions have been solicited and include an appropriate range of views.

4. The Committee's decision

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

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

The Committee considered each of the three points raised by the complainant in turn.

Point 1 – The programme should have put the levels of dissatisfaction relating to overcrowding in context by interviewing some satisfied customers or by quoting Passenger Focus' key statistics.

The Committee noted the following extract from the complainant's letter of appeal:

"The National Passenger Survey for spring 2011, published last summer by Passenger Focus (PF), the independent transport watchdog, and based on 27,000 questionnaires, shows that 84% of passengers were satisfied with their overall journey, 11% neither satisfied nor dissatisfied, and 6% dissatisfied. Yet the That's

Britain! show only broadcast interviews with dissatisfied passengers and did not make reference to the PF findings.

Before the programme was broadcast, [the independent production company] was made aware of the PF research and of our concerns about the programme's attempt to make contact only with dissatisfied passengers.

We argue that the programme should have either interviewed some satisfied customers or at the least have quoted PF's key statistics; by doing neither, the programme presented an unbalanced, inaccurate and unfair view of passengers' experience of train travel."

The Committee noted the ECU's conclusion that the programme did not suggest that those who experienced overcrowding were representative of the experience of all who travel by train:

"...the programme avoided the sort of sweeping statement which might have been taken to mean that the problems affected all passengers ... the reference to commuters, and to commuters on particular routes, would have gone some way towards ensuring that viewers did not assume that this affected the majority of travellers."

The Committee noted the ECU's citation of Passenger Focus figures relating specifically to overcrowding and value for money, which illustrated lower levels of satisfaction than the 84% overall figure for train travel quoted by the complainant. For example, the finding which revealed satisfaction levels as low as 28% on homeward journeys for some commuters in Manchester. The Committee noted the independent editorial adviser's confirmation that the statistics from the Passenger Focus survey quoted in the programme's response were accurate.

The Committee noted the ECU's conclusion that the programme presented adequate information on the reasons for train overcrowding, which would have guarded against any assumption on the part of the audience that this was a straightforward matter which might be easily resolved.

The Committee also noted the comments from the programme in response to this appeal:

"ATOC brought certain figures to our attention prior to broadcast ...However... it was clear that although ATOC chose to concentrate on the overall satisfaction figures, that the (Passenger Focus) survey did in fact set out a very detailed breakdown by category and train operator of numerous aspects of passengers' train experience, including figures relating specifically to passenger comments on "sufficient room to stand and sit" and "value for money", the issues referred to in the programme. The overall results for both of these categories nationally showed a significant body of dissatisfaction amongst passengers (19% and 35%, respectively). They also show that satisfaction levels in these two categories have either decreased since the previous survey, or remained the same. In addition, the results for these two categories specifically in respect of the two train operators featured in the programme, Northern Trains and Arriva Trains Wales, show, respectively, dissatisfaction at 22% and 19% in respect of crowding and 25% and 22% in respect of value for money."

The Committee noted the contents of an ATOC press release published shortly before transmission:

“Faster trains and better services are attracting record numbers of people to the railways. But the flip side is overcrowding and we understand passengers’ frustration when they can’t get a seat.”

The Committee noted that in lieu of an interview, ATOC provided a series of answers in a written statement to the programme and that most of ATOC’s key points were reflected in the programme – in the reporter’s commentary during the filmed report; and in a specific section in the studio interview. The Committee noted the comments weren’t directly attributed to ATOC:

Presenter: And what do the operating companies make of it?

Reporter: What they told us is the average rise in the regulated fares which includes the season tickets that we’re talking about is set by the government. Nothing to do with them. The money raised through fares will help pay for more carriages. 2,700 of them to deal with this overcrowding.

The Committee confirmed that the choice of what to include in a programme is not in itself an issue for consideration against the Editorial Guidelines but is a legitimate exercise of editorial discretion by programme makers, unless it results in a standards breach. There was therefore no requirement for the programme to either interview satisfied customers or to quote specific statistics, such as those contained in the Passenger Focus survey, regardless of whether they had been brought to the programme’s attention in advance of broadcast, unless failure to do so would lead to unfairness or a lack of due accuracy or due impartiality.

The Committee considered whether the content failed to give due weight and prominence to a significant view or perspective, namely whether the omission of any satisfied customers’ voices and/or the broader statistic on satisfaction misled the audience and/or led to bias or an imbalance of views.

The Committee agreed that the programme had signposted its focus and managed expectations such that the audience would have been entirely clear that the item was about overcrowding and ticket pricing and was not commenting on train travel in general.

The Committee concluded that the item contained substantial first hand testimony and visual images of overcrowded commuter trains reflecting passengers’ experiences and views, balanced with a range of interviews and commentary reflecting some of the causes and strategies for dealing with the problem. It noted that while there were no voices reflecting satisfied customers, the views of all of the key stakeholders were included in the programme. In addition, the programme did include a specific statistic with regard to ticket prices, reflecting a recent YouGov poll which said 8 out of 10 passengers were opposed to the fare increases.

The Committee concluded that the item was well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language and the absence of satisfied voices was neither misleading nor a failure of impartiality.

The Committee went on to consider the allegation that the programme failed to observe the guidelines in Section 10 on Politics, Public Policy and Polls, specifically clause 10.4.47 which states:

We should always make it clear that vox pops only represent some aspects of an argument and do not give any indication of the weight or breadth of opinion.

Vox pops on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area, must be edited to accurately represent those whose opinions have been solicited and include an appropriate range of views.

The Committee noted the final paragraph in the introduction to Section 10 of the Guidelines:

This section of the Guidelines is intended to help those making output for the BBC, who wish to include polls, surveys and questionnaires in their content, to do so appropriately, meeting the requirements of due accuracy and impartiality.

The Committee noted that Section 10 is primarily intended to aid programme makers to achieve accuracy and impartiality in their coverage of politics, party policies and elections, with specific guidance on the handling of interaction with audiences, online voting and other techniques used to gauge the views of the population.

As the railways are a state-subsidised industry, the Committee accepted that any matter relating to rail travel could be considered a public policy issue. But the Committee was also conscious that the vox pops in the item did not ask participants for their view on public policy, but were of a different nature. The first set of vox pops were not random voters but passengers, standing on a crowded commuter train, commenting on their range of personal experiences:

"No one usually gets a seat. We all have to stand and it's usually really cramped"

"People are fighting for seats and it just becomes carnage"

"I hardly ever get a seat"

"There's nothing to hold onto, people are having to grab hold of strangers, say sorry about that all the time. Squashed against the window"

The second set of vox pops were rail travellers responding to being told that there was no legislation governing how much space humans were entitled to on public transportation.

"I didn't realise that. Shocking..."

"It doesn't seem fair really does it."

“I’m shocked. Worse than animals”

The Committee considered what it understood to be the intended meaning of Section 10 of the Guidelines: that is, guidance for broadcasters intending to use “straw poll” style vox pops of random voters on a specific issue.

The Committee also noted that the vox pops in question were not a standalone segment, but part of a much larger item. It noted too the stipulation in the introduction to Section 10, that the Guideline should be read in conjunction with Section 4, Impartiality.

The Committee considered that the vox pops did not purport to be a representative sample of passengers, and were merely used to illustrate the frustration felt by some passengers.

The Committee concluded that, taking into account the content of the vox pops, the meaning of Section 10 and the fact the Committee had already decided the item had been duly accurate and impartial in how it reflected the issues of overcrowding and rail fare increases, there had not been a breach of section 10.4.47 of the Guidelines.

Accordingly, the Committee did not find a breach of the Guidelines on Accuracy, Impartiality, or Politics, Public Policy and Polls in relation to this point.

The Committee noted that the complainant had also made an allegation of unfairness with regard to this point. The Committee was mindful of its conclusion that this aspect of the programme was well sourced, based on sound evidence, thoroughly tested and was presented in clear, precise language. The Committee noted the requirements of the relevant section of the Fairness Guidelines:

6.2.3

When our output contains allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation, those criticised should normally have a right of reply, unless there is an editorial justification to proceed without it.

The Committee noted that the programme had put questions to ATOC in writing, that ATOC had provided answers in a written statement, and that the programme had reflected most of ATOC’s key points. The Committee also noted that, in an email to the programme makers the day after broadcast, ATOC had expressed appreciation for the parts of its statement used in the programme. The Committee agreed that ATOC had been given an appropriate right of reply within the programme and concluded that the Guidelines on Fairness had not been breached.

Point 2 –The allegation that the reference to “eye-watering profits” was not editorially justified

The Committee noted the relevant commentary:

Passenger: Everyone on this train pays at least £130 if they’re getting a season ticket. If you times that by the number of people on the train that’s a lot of money. So it’s, obviously, money is the thing that they care about.

Reporter: Across the board a lot of money is being made by our rail companies. Last year operating profits were an eye-watering 200 million pounds plus this January ticket prices are going up by up to 6.2%.

The Committee noted the complainant's allegation:

"The item made reference to 'eye-watering' profits of £200m last year. There are 19 franchised train companies and average profit is about 3% of turnover. How can the phrase be justified?

Our assertion is that [the independent production company] used a subjective description of train company profits as an objective fact, for which there was neither attribution nor justification and in so doing displayed a lack of impartiality."

It noted too the complainant's comments on this:

"When we asked the BBC to justify the phrase, [the independent production company] responded (letter of 18 January 2012) that

'we would suggest the average commuter – like those in our film paying over £130 a month and who are now being asked to pay even more – when asked about those profits would agree that the phrase "eye-watering" is an apt description.'

[The independent production company's] justification is that it was reflecting the views of passengers, yet no passenger was quoted making this point nor was the phrase attributed to passengers."

The Committee noted the ECU response at Stage 2:

"I would agree that viewed against the costs of running a train company, the operating profits of your members may be judged to be reasonably modest ... (but) I am not convinced that this line would have misled viewers ... (Firstly) £200 million is clearly a large sum of money (Secondly) given that the precise amount of profit was given, I am not sure that viewers would have been misled regarding it – for instance, into believing it to be a far greater sum. Clearly, this was not an entirely neutral way to describe that sum, and I would agree that more information on the running costs faced by the train companies, or operating profits as a percentage, would have given viewers a much fuller picture of the economic realities... However I do not think ... the word 'eye-watering' would have been enough to mislead viewers – who would ... have been able to make up their own minds about the figure in front of them ... While I would agree that this was a somewhat subjective judgement, and that more information would have been helpful context, I do not agree that it required attribution."

The Committee noted the programme's comments in response to this appeal:

"The programme is a consumer-driven programme and the reporter's voice over is therefore written from the perspective of ordinary people. To any ordinary person, a figure of £200 million is, we would argue, an objectively huge number. To passengers enduring uncomfortably overcrowded trains on a daily basis, with fares increasing in excess of inflation, who feel, as expressed by the case study featured in the programme, that the train operators could solve the problem through investment in additional carriages, but who see no improvement in the situation,

the figure would seem to be unacceptable and could be described as 'eye-watering'."

The Committee was not persuaded by the conclusion reached by the ECU. Whilst the Committee acknowledged that the programme had accurately stated the profit figure of £200 million, it concluded that, without the additional context relating the figure to any or all of the pertinent facts such as the number of rail companies, the overall operating costs of £11 billion or the 3% profit margin, the inclusion of the top line figure was meaningless and would not adequately equip the audience to reach an accurate judgement as to whether or not the profit level was indeed "eye-watering".

Neither did the Committee accept the programme's contention that the audience would have understood the reporter was speaking on behalf of the consumer, who would likely find the level of profits "eye-watering". The Committee considered the framing of the sentence clearly gave the impression that it was the programme's view that rail company profits were "eye-watering", but there was no evidence to support this, nor any attribution.

The Committee concluded the statement was not well sourced nor based on sound evidence and fell short of the requirements of the Guideline on Accuracy in that it would have misled the audience on a material fact. Accordingly the Committee concluded that the content had failed the test for due accuracy and it upheld a breach of the Accuracy Guidelines.

The Committee noted that the complainant had alleged that the description of profits as "eye watering" was not impartial. The Committee noted the programme team's view that the reporter was speaking on behalf of the consumer. While the Committee did not agree that this is what the audience would have understood, it accepted that it was not the programme team's intention to mislead the audience. The Committee agreed that, in relation to this point, the requirements of due impartiality were met and it did not uphold a breach of the Guidelines on Impartiality in this regard.

Point 3 – The accuracy and fairness of the statement that ATOC had declined an interview

The Committee noted the relevant commentary used in the programme:

"We asked Arriva Trains Wales and Northern Trains for an interview, but they declined. As did the national body representing the industry, ATOC – the Association of Train Operating Companies. So I'm going to see the minister for Railways, Theresa Villiers, to see what she has to say about jammed trains and sky-high prices."

The Committee noted the trail of email exchanges between ATOC and the programme makers which substantiated the complainant's claim that it had offered a live interview, and also the programme's explanation that it had been clearly communicated that the option was not available in the programme's current format.

The Committee noted ATOC's allegation:

"The programme said that ATOC had declined an interview. I'm afraid this is not true. We said that we would be happy to take part in an interview in the studio after the pre-record, but [the independent production company] did not take us up on this offer. By making this incorrect claim, I am concerned that viewers would consider that we had something to hide or were not prepared to defend ourselves in public when in reality we were very keen to discuss on air the issues that had been raised."

The Committee noted the summary of the ECU finding:

"I am not convinced that what was said amounted to a material inaccuracy, or would have given viewers a misleading impression of ATOC's position. ATOC had declined an interview in the format offered to them, and requested an interview in a format which those involved knew was not available. This it seems to me, is a position which in practical terms amounts to a 'no'.

It would have been better for the programme to have explicitly referred to ATOC by name (rather than to 'train operating companies') when giving an account of your response to the issues raised in the programme. However I do think that even with this caveat, this response would have gone some way towards guarding against the impression you feel may have been given – that of a group with 'something to hide'... I note that you have also said that you were satisfied that the views of ATOC were effectively put in the programme."

The Committee noted the programme's response at Stage 1:

"We had extensive discussions with ATOC about an interview for inclusion in the film. We offered multiple dates and also gave them the option of a separate interview after all other filming for that item had been completed. All of these suggestions were declined by ATOC and they decided they would rather provide us with a statement, which was read out in the studio during the live broadcast."

The Committee noted the programme's comments in response to the Appeal:

"The words used were an expression of fact: ATOC did decline an interview and they declined it in the full knowledge that their offer to give us a live studio interview was not an option on this programme. As set out previously, we went to considerable lengths to keep the option open for a filmed interview with ATOC for inclusion in the programme. All offers made by us were declined. The statement is factually accurate. Moreover, we would like to assert that by stating that the offer of an interview had been 'declined' there was no implication that ATOC, or indeed Arriva Trains Wales or Northern Rail, had anything to hide."

The Committee considered that the programme had acted entirely properly in choosing the terms in which it would offer an opportunity for ATOC to be interviewed. The Committee also concluded that the programme had been honest and straightforward in its dealings with ATOC prior to broadcast.

However, the Committee did not accept that the way in which the programme reflected ATOC's position was duly accurate. The Committee considered that that the programme should have stated more clearly the terms of ATOC's non-appearance, i.e. that it had declined a recorded interview. The Committee felt the absence of this information coupled with the failure to state clearly that a statement had been provided by ATOC in lieu of an interview, would have left the audience unaware that ATOC had participated in the programme through a statement. The Committee's view was that this could easily have been avoided by the programme stating the terms of ATOC's absence clearly and relating it directly to the statement discussed in the interview with the presenter after the item. The Committee took the view that as a result of failing to explain ATOC's absence in terms that were fair and duly accurate, the audience may have reached a more negative conclusion about ATOC than they might have done had they been in possession of more facts.

Accordingly, the Committee upheld a breach of section 6.4.28 of the Fairness Guideline:

When our audience might reasonably expect to hear counter arguments or where an individual, viewpoint or organisation is not represented it may be appropriate to explain the absence, particularly if it would be unfair to the missing contributor not to do so. This should be done in terms that are fair.

The Committee also upheld a breach of section 3.2.3 of the Accuracy Guideline:

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.

Finally, the Committee considered the item overall against the Impartiality Guideline. Whilst acknowledging the individual failures of accuracy and fairness in relation to the specific points above, the Committee nevertheless confirmed its view that overall the item was duly impartial in how it reflected the issues of train overcrowding and ticket prices. The Committee concluded that the failures were primarily related to loose language and noted that a brief addition to the commentary at the appropriate points could have made the crucial difference to the item.

Finding: Upheld in part with regard to Accuracy and Fairness. Not upheld with regard to Impartiality or Politics, Public Policy and Polls.

Today, BBC Radio 4, 1 October 2011

1. Background

The week after the Palestinian leader Mahmoud Abbas went to the UN in New York and made his case for Palestinian statehood the *Today* programme broadcast a report by the Middle East Correspondent, Kevin Connolly. Mr Connolly visited two West Bank communities: the Israeli settlement of Itamar and the neighbouring Palestinian village of Awarta. He spoke to a Rabbi and a group of Israeli tourists in Itamar and to the Mayor of Awarta.

A number of 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 complaints process and had received responses at Stage 1 from either BBC Audience Services or directly from the *Today* programme. All Stage 2 responses were from the Editorial Complaints Unit (ECU).

None of the separate points raised by any of the complainants was upheld by the ECU.

The appeals received at the BBC Trust alleged that the item was not presented with due impartiality, that it contained inaccuracies and omissions the result of which was that the Palestinian case was not properly put.

It was 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.

The Head of Editorial Standards for the BBC Trust considered that none of the points raised in the consolidated appeal would have a reasonable prospect of success were they to proceed to appeal.

The parties to the consolidated appeal were advised in writing of the Head of Editorial Standards' decision not to proceed to appeal on the various points, along with the detailed reasons for her decisions. The parties were given the opportunity to challenge the Head of Editorial Standards' decision.

Challenges to the Head of Editorial Standards' decision were received from three of the complainants. These were considered by the ESC on 3 May 2012 and the decision has been published here:

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

At the meeting on 3 May 2012 the ESC agreed not to proceed with the consolidated appeal on all but one point. The points which the Trust confirmed it would not hear on appeal were:

- the item failed to deliver what was billed in the introduction: it promised to be about the views of Palestinians but failed to state the Palestinian case
- the programme lacked sufficient historical context and contained factual inaccuracies by Israeli contributors which were not challenged
- the item was too sympathetic to the Israeli perspective
- the reference to the murdered Israeli family was not editorially justified; the language used was too emotive; violence suffered by Palestinians was not accorded the same prominence.

2. The complaint

The Committee agreed to proceed to hear on appeal a point raised regarding the accuracy with which the *Today* programme framed the status of the West Bank in the introduction to Kevin Connolly's report:

"But has Mr Abbas's bold diplomatic move made any difference on the ground, for example on the West Bank of the River Jordan where the bulk of the land the Palestinians want for their new state is to be found?"

Complainants alleged that the use of the word "want" in the context of the introduction was inaccurate.

3. Applicable Editorial Standards

The following sections of the BBC's Editorial Guidelines are relevant to this complaint.

Section 3: Accuracy

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

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

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

4. The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence,

including (but not limited to) the Editorial Adviser's report and the subsequent submissions from the complainants.

The Committee considered the allegation that the programme misled the audience in how it framed the status of the West Bank.

The Committee noted the relevant section of script, which was in John Humphrys' introduction:

"It's a week since the Palestinian leader Mahmoud Abbas took his case for statehood to the UN in New York. That application is now working its way through the labyrinths of the UN committee system. But has Mr Abbas's bold move made any difference on the ground? For example on the west bank of the River Jordan where the bulk of the land the Palestinians want for their new state is to be found? Mr Abbas says Israeli settlers are the main obstacles to peace and the building of settlements on occupied territories widely seen as a breach of international law. So Kevin Connolly went to one of the settlements, Itamar and to the neighbouring Palestinian village of Awarta, to see if they thought last week's events in New York had changed anything."

The Committee noted the variety of ways in which the complainants articulated their complaint at Stages 1 and 2 of the complaints process, in their appeals to the Trust and in their submissions following the distribution of the Editorial Adviser's report:

"the land the Palestinians want for their new state' implies it is something extra that they covet, rather than the land they currently live on and which is rapidly becoming whittled away."

"The introduction in itself was thoroughly misleading and inaccurate, so I fail to understand why (Audience Services) thinks this paragraph explains accurately the legal status of the West Bank. The phrase 'on the West Bank of the River Jordan where the bulk of the land the Palestinians want for their new state is to be found' completely negates the fact that 'the West Bank' IS already Palestinian territory; it is not a question of the Palestinians 'wanting' this land, it is Palestinian land."

"(the phrasing) could actually imply that the Palestinians are after more land than that which is already recognised by the international community as being Palestinian."

"To use the word 'want' in the phrase ... is inaccurate and demeaning and implies that the land is not recognised as Palestinian. The Palestinians don't 'want' it – it is their land already, one does not 'want' something that one already has. The West Bank is Palestinian territory, not Israeli territory. The BBC is obliged to recognise the fact of the Israeli Occupation of Palestinian land, it is not the Palestinians who 'want' the land, it is the Israelis who 'want' the land."

"There are two distinct narratives about most elements of the Palestine/Israel problem. For example, the statement that '...the West Bank of the River Jordan (is) where the bulk of the land the Palestinians want for their new state is to be found' is not disputed by Israel: in fact it is part of the Israeli narrative. The Palestinian narrative is different. For example, it might be, 'The West Bank is Palestinian land that is under military occupation by Israel.' You may argue that both statements are accurate yet clearly they differ. The problem is that the BBC adopted the Israeli narrative but did not balance it by the Palestinian narrative. This is unfair and, to many of us, offensive."

The Committee noted the ECU's response to the complainants at Stage 2:

"Stating the Palestinians want the land does not suggest that they are not entitled to it, but only that they believe that a future State of Palestine must include this area. It is a fact that it currently includes Israeli settlements."

The Committee noted a response from the Deputy Editor of the *Today* programme to a complainant at Stage 1:

"The phrase 'on the West Bank of the River Jordan where the bulk of the land the Palestinians want for their new state is to be found' does not bear the interpretation you place on it. Rather than suggesting a wider demand, it is just shorthand for the basic idea behind the two-state solution. The fact that some people – including yourself – take the view that it's already Palestinian territory isn't really material – the sentence is about the aspiration to turn the territory into a country, not about who 'owns' it."

The Committee noted Kevin Connolly's comments in response to this appeal:

"I maintain that it's legitimate to speak of the West Bank as containing most of the land the Palestinians want to form their new state.

"It seems to me that the word 'want' in this context clearly applies to the fact that the land is not currently in the possession of the Palestinians; as the complainants tell us it is occupied by Israel and has been since 1967.

"I don't accept that the word 'want' can be held either implicitly or explicitly to contain a judgement on the legitimacy of the underlying Palestinian claim to the land, historical and political. The conditional, aspirational sense of the word 'want' implying something not currently in your possession can clearly be seen to apply to the intention of statehood.

"I don't believe that the word 'want' has inherently negative or demeaning connotations in the ordinary, natural sense in which it is used here.

"The complaint about the word 'want' amounts to an allegation of unconscious bias – that the very words we choose reveal us to be anti-Palestinian."

The Committee noted too the further comments received from the *Today* programme in response to the appeal:

"Kevin has put it very well - it is a question of our right to be able to convey information clearly and succinctly. 'The Palestinians want the land for their state' is not a reference to whether it's already under Palestinian control, nor its status under international law. It's about the bits Palestinians want included in any 'two state solution', and the context is perfectly clear. The same introduction includes the phrase 'the building of settlements on occupied territory is widely seen as a breach of international law', which makes clear most countries regard the building of settlements as illegal."

In reaching its decision, the Committee acknowledged the complainants' assertion that there is widespread support for the legitimacy of the Palestinian claim, but noted that there is not as yet a Palestinian state. The Committee noted the bid for statehood was the central point of Mahmoud Abbas' visit to the UN.

The Committee noted that the sentence following the one which is the subject of this appeal made clear the broader context:

“... the building of settlements on occupied territories [is] widely seen as a breach of international law.”

The Committee agreed that the way in which the programme framed the status of the West Bank in this sentence was of it being territory that is occupied by Israel.

The Committee concluded that the use of the word “want” in this context did not imply any judgement on the legitimacy of the Palestinian claim to the land and agreed with the programme makers that it was simply being used in the “conditional, aspirational sense of the word” to imply something “not currently in your possession”, in this case, statehood.

The Committee reiterated the sentiments it had expressed in previous appeals on aspects of the Israeli/Palestinian issue, about the importance of the use of considered language and adequate context, with the aim of avoiding any perception of a lack of impartiality or accuracy.

Whilst acknowledging that those who hold strong views on the status of the West Bank might have framed the point differently, the Committee stated it was comfortable that the *Today* programme had taken the sensitivity of the issue into account and that the content was “well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language”.

Accordingly, the Committee concluded the item was duly accurate in how it framed the status of the West Bank.

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.

Sportscene: Falkirk v Celtic, BBC Scotland, 29 January 2012

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

The complaint

Stage 1

The complainant wrote to the BBC saying that coverage at the start of the match between Falkirk and Celtic was biased because it showed only the Celtic team and mascots, and no shots of the Falkirk team and mascots, which included his son.

In reply, BBC Audience Services apologised for not showing the complainant's son during the pre-match sequence and noted that it was the job of the match director to judge the best and most appropriate shot in front of him on the desk at any given moment. The BBC did not believe that this had anything to do with bias against Falkirk.

The complainant wrote again saying that the response had not adequately answered his complaint. If there were no bias in the reporting, both teams would have been covered in the opening line-up.

BBC Audience Services replied that there was nothing further the BBC could add on the matter.

Stage 2

The complainant wrote to the BBC repeating his complaint about bias in coverage of the opening line-up and expressing dissatisfaction with the response received at Stage 1.

In reply, the Head of Public Policy & Corporate Affairs, BBC Scotland, disagreed that the coverage showed bias. He said it was necessary to consider the coverage in the context of the overall game, which he believed offered a balanced report of the contest between the two sides. The director had decided to use particular shots to illustrate the story of the game and its build-up, and this was entirely consistent with an approach which sought to provide viewers with content that captured all the key match elements.

The Head of Public Policy & Corporate Affairs noted that the match build-up included a shot that travelled along the Celtic line-up, resting on the captain. It then cut to a crowd shot before returning to the line-ups, to capture the Falkirk players shaking hands with their opponents. The fact that the pre-match coverage did not include absolutely identical footage of both teams as they lined up was not evidence of bias, in his view.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received at Stage 2 and that to show all of one team and not the other was evidence of bias. He said the length of time taken by BBC staff to respond to his complaint was also unacceptable.

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

The Senior Editorial Strategy Adviser explained 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. The Head of Editorial Standards had read the relevant correspondence and an independent adviser had watched the item in question.

The Senior Editorial Strategy Adviser said the Head of Editorial Standards noted that the pre-match coverage included both teams. The Head of Editorial Standards agreed with the Head of Public Policy & Corporate Affairs that the fact that it did not include identical footage of both teams was not evidence of bias. She did not believe that this part of the appeal had a reasonable prospect of success.

As regards the length of time taken to respond to the complaint, the Head of Editorial Standards noted that at Stage 1 the response was within 10 working days, as set out on the BBC complaints website. At stage 2 it took 51 working days for the complainant to receive a response which was well outside the 20 working days as set out on the website. The complainant also did not receive an apology. This element of the appeal would be considered by the Committee at its September meeting.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the part of his appeal relating to bias. He questioned how a shot of one player lasting nearly ten seconds was not deemed biased.

The Committee's decision

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

The Committee noted that the Head of Editorial Standards had accepted the complainant's appeal relating to the handling of his complaint and this matter would be considered at a future Committee meeting.

The Committee then turned to the substance of the complaint, which the Head of Editorial Standards had not proposed to take forward on appeal. The Committee noted the complainant's view that the differences in the pre-match coverage of the teams was evidence of bias. The Committee also noted that the complainant had emphasised that his complaint was not motivated by the fact that his son had been a mascot for the Falkirk team.

The Committee agreed with the BBC's view that in considering the impartiality of the broadcast the totality of the coverage should be taken into account. The Committee noted that the match build-up, after predominantly focusing on the Falkirk team and their mascots preparing to walk out onto the pitch, included a shot that travelled along the

Celtic line-up, resting on the captain, and that the director had then chosen to cut to a crowd shot before returning to show the Falkirk players shaking hands with their opponents. The Committee noted the complainant's particular reference to the shot of the Celtic captain which he said lasted 10 seconds. The Committee understood the complainant's particular interest in seeing the Falkirk players on the pitch with their mascots; however, it did not agree that the director's decision to portray the match build-up in the way it had been done was evidence of bias. The Committee did not agree that identical shots of both teams as they lined up on the pitch were required to meet the Editorial Guidelines' requirement for due impartiality.

The Committee therefore agreed that there was no reasonable prospect of success for an appeal on the basis that the choice of shots used in the pre-match coverage breached the Impartiality Guideline.

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

Edinburgh Comedy Fest Live, BBC Three, 22 January 2012

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

The complaint

Stage 1

The complainant wrote to the BBC about the performance of a song in the above programme. He quoted some of the lyrics stating that they were offensive to Christians and questioned whether any other religion would be treated the same way.

In reply, BBC Audience Services explained that the BBC provided programmes for a whole range of viewers with different tastes in humour. Some programmes would occasionally strike some viewers as distasteful. The BBC did not believe that religion should be off-limits for humorists. Such depictions were often exaggerated and far from the truth and there was no intention to mock the essence of religion.

The complainant wrote again on two further occasions asking for the content to be removed from the programme on the grounds that it was offensive to Christians.

BBC Audience Services replied saying that the complaint had been discussed with the BBC's Executive Producer. They explained that Dead Cat Bounce was a comedy rock group who covered a diverse range of subjects and their brand of musical comedy fell into the "silly fun" category, rather than "cruel or degrading". The song *Christians in Love* portrayed a newlywed Christian couple who were somewhat naive about sexual mores. The song was not meant maliciously and was rather benign in its portrayal of a well established stereotype. The BBC went on to explain that this show had been broadcast around a dozen times and they had only received six complaints about this particular performance which indicated that the majority of viewers took it in the spirit intended.

Stage 2

The complainant wrote to the Editorial Complaints Unit saying that he found the song offensive and asking for it not to be broadcast in future. He said the song portrayed Christians as dopey and animalistic, comparing them to "pigs". The complainant was also concerned that the BBC was practising double-standards, and he asked whether this song would be broadcast if the word "Muslim" was substituted for "Christian".

An ECU Complaints Director considered the complaint in relation to the BBC Editorial Guidelines on Harm and Offence, specifically Portrayal. However, the Complaints Director said the questions raised about alleged double-standards at the BBC did not fall under the Guidelines and consequently were not part of the ECU's remit.

The Complaints Director explained that the Guidelines did not prohibit the broadcasting of offensive material, but did require editorial justification which in this case the comedic context provided. He said that Christianity itself was not being mocked, but a perceived stereotype about Christian attitudes to sex. The metaphors used in the song were designed to provoke laughter through absurd images and not provide any serious comparison with Christians having sex. On this basis, the ECU did not believe that these

absurd observations would have caused any serious offence and any residual offence was more than offset by comic effect. This kind of humour fell well within the established audience expectations for a comedy programme like this.

After further correspondence the Complaints Director explained that he was not implying that there was a widespread stereotype that Christians were sexually incompetent, but that there was a broader stereotype referring to their prudishness and embarrassment about sex. On this basis, it was not an attack on Christians or Christianity. With reference to whether a similar comic routine would be permitted by the BBC with another religious faith as a target, the Complaints Director said that any similar complaint made on behalf of another denomination would be dealt with in exactly the same way.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, quoting the lyrics from the Dead Cat Bounce's performance which he said, as a Christian, he found offensive. He said that:

- The lyrics were dehumanising, describing Christians as animals sexually and were aimed directly at Christians, not their beliefs and attitudes. The song was snide and mocked Christians portraying them as wet and incompetent.
- The editorial justification used by the ECU was unjust and hypocritical as this material would not be allowed by the BBC if it had been aimed at other groups.

The complainant reiterated that he wanted this performance removed from broadcast.

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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. The Senior Editorial Strategy Adviser said the Head of Editorial Standards had read the relevant correspondence and transcripts of the item in question and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser said the Head of Editorial Standards noted that, when considering this case, the ECU felt that the most applicable Guidelines were in section 5 dealing with Harm and Offence, and particularly Portrayal. Whilst the Head of Editorial Standards agreed that these Guidelines were the most applicable, she thought it was also worth noting the Guidelines in the same section dealing with the general principles of Harm and Offence and Generally Accepted Standards. She said that Generally Accepted Standards is a central principle of the Editorial Guidelines. This explained that context was an essential component in judging whether or not content was acceptable to viewers and listeners. The BBC was required to take into account the expectations of the likely audience and, in this case, was aware that the audience profile for BBC Three was mainly young adults. BBC Three scheduled a wide variety of comedy programmes for this audience and, through audience research, knew that younger viewers enjoyed humour which could appear subversive and cutting-edge and may not appeal to a more mainstream audience. This did not mean that any content could be excused on the grounds of humour, but the type of audience viewing was an important component when considering matters relating to offence.

In this case, the Head of Editorial Standards noted that the group Dead Cat Bounce had established a reputation on the comedy circuit, performing at many festivals and winning awards. They were known for their outlandish lyrics which set out to poke fun at stereotypes and banal situations. Recent examples had included driving lessons and orthopaedic shoes. She said that whilst some viewers may not be aware of this background, the majority of viewers would not be surprised at this group appearing in a programme covering the Edinburgh Comedy Festival, featuring alternative comedy.

The Head of Editorial Standards said that, whilst the lyrics of the particular song which the complainant had highlighted may not be to every viewer's taste, they did not appear to be attacking the faith and belief of Christianity, but used simile and metaphor to create an absurd picture of naive love-making. Given this context, the Head of Editorial Standards believed it was unlikely that the majority of viewers would have found the song offensive.

As regards the hypothetical situation of a similar song being performed but referring to another religion, the BBC considered every case on its own merits and it would be invidious to speculate on whether a different decision would be reached. The BBC had considered many complaints over the years concerning many religions and no one religion had received special treatment.

The Head of Editorial Standards believed that the ECU had dealt satisfactorily with the complaint in terms of the Guidelines and concluded that there would be no reasonable prospect of success if it were to 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. He asked Trustees to focus on the complaint of double standards which he felt had not been properly answered. He stated his belief that if Muslims complained about a similar song, action would be taken. He referred to a recent report accusing the BBC of being over-considerate towards Islam and to an alleged comment by a BBC news presenter who said that Christians were fair game for insults at the BBC.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the item in question.

The Committee noted that in his appeal to the Trust the complainant had said that the lyrics to the song were dehumanising in describing Christians as animals. The Committee noted his argument that the song was aimed at Christians directly, rather than at their beliefs and attitudes. The Committee also noted that the complainant had said the ECU's finding that the song had been editorially justified was unjust and hypocritical as, in his view, it would not have been allowed if specifically aimed at people of other faiths.

The Committee noted that the ECU and the Head of Editorial Standards had noted the audience expectations for BBC Three and the group who performed the song and argued that there was editorial justification for the broadcast of such material. The Committee agreed that the BBC had demonstrated the editorial justification for including the group and this song in the programme. The Committee considered that the song was not attacking the faith and belief of Christianity, or Christians in general, but could be seen as using similes to play on the familiar comic construct of incompetent lovers on their wedding night. The Committee did not agree that the use of such comic similes as trout flapping in a puddle and pigs in a barrel was necessarily dehumanising to Christians,

intentionally or otherwise. The Committee was mindful that in the second half of the song the object of the comedy was clearly the absurd image of a four-piece band, which had been playing at the wedding, somehow ending up singing unnoticed in the en-suite bathroom of the newlyweds. The Committee agreed that there was no reasonable prospect of success for an appeal on the basis that there had been a breach of the Guidelines on Harm and Offence or Portrayal.

The Committee noted that the complainant, in his request for a review of the Head of Editorial Standards' decision, had asked the Committee to focus on his belief that, if Muslims had complained about a similar song, action would be taken. The Committee agreed that the BBC had considered many complaints over the years, concerning many religions, and no one religion had received special treatment in the handling of complaints. The Committee was mindful that in deciding whether there was a case for considering a complaint about this programme on appeal, what was important was the material which had been broadcast rather than a hypothetical alternative.

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

***Panorama: Britain's Crimes of Honour*, BBC One, 19 March 2012**

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

The complaint

Stage 1

The complainant wrote to the BBC, criticising *Panorama: Britain's Crimes of Honour* for, in his view, overly associating Sikhs with honour killings when, he alleged, this issue mostly arose in the Muslim religion. The complainant said that the programme suggested the issue was a bigger problem in the Sikh religion than he believed it actually was.

In reply, BBC Audience Services explained that it was not always possible or practical to reflect all the different opinions on a subject within individual programmes. The BBC did not seek to denigrate or promote any view. It sought rather to identify all significant views, and to test them rigorously and fairly on behalf of the audience.

The complainant wrote again saying that the programme identified only the Sikh religion by name, even though all of the main examples were from the Muslim faith, and showed a Sikh temple when, he said, it could have shown a Hindu one. The complainant noted that one participant acknowledged this was primarily a Muslim problem but, in the complainant's view, there was far too much about the Sikh religion.

The BBC replied, saying that the programme had mentioned that the problem affected South Asian and Middle Eastern communities and was more prevalent in Muslim communities. One Muslim contributor acknowledged this. Another contributor, a Sikh, had been abused herself and set up a helpline. There were shots of a Sikh temple and a mosque while the script discussed community leadership but this was not a programme primarily about religion and there was no attempt to link the faiths with the crimes. The BBC did not agree that the film made more visual references to the Sikh religion than to Islam.

The complainant wrote again saying the programme should have mentioned the Hindu religion as it was by far the biggest in South East Asia. He also questioned why the programme mentioned that one contributor was a Sikh without saying that others were Muslim. He asked why, if religion was not a focus, only the Sikh religion was mentioned by name and how many places – apart from the Sikh temple – were identified by name.

In response, the BBC repeated that faith was not the focus of the programme. A poll conducted for the BBC about the problem, which featured in the programme and which referred on air only to "young Asians", had questioned a representative sample of all religions amongst immigrant communities and was available online. However, since faith had not been the editorial focus of the programme, there was no imperative to depict Hindus or Muslims specifically in the film. One contributor announced himself to be Muslim so there was no need for a script to do so. He said that most of such crimes happened within his community. The programme identified a contributor as Sikh in the programme commentary because she did not give this information in her transmitted interview. There were two shots of a mosque and two of a Sikh temple. The temple shown was that involved in the contributor's story and no generic shots of a Sikh temple

had been used. Finally, the BBC said that the Sikh religion was not the only one named in the film – Islam was mentioned too.

Stage 2

The complainant wrote to the Editorial Complaints Unit saying that the BBC had failed to provide a suitable response to his complaint.

An ECU Complaints Director considered the complaint in relation to the Editorial Guidelines on Impartiality, Accuracy and Avoiding Misleading Audiences.

The Complaints Director did not share the complainant's concerns that honour killings were portrayed as primarily a Sikh problem. He quoted a clip from the programme featuring Nazir Afzal, of the Crown Prosecution Service, who said:

"It needs to be said that the vast majority that we see involve the Muslim community of which I am a member."

The Complaints Director said that the only part of the programme that dwelt on the Sikh community related to the specific story of one contributor leaving home and setting up a helpline. He thought it was clear that this was one particular experience and not a generalisation.

The Complaints Director said that these were the only two references to religion at all – the rest of the programme spoke about different communities but not in religious terms. He did not think that the visual references to the Sikh temple and mosque would have led the audience to infer that this was primarily a Sikh religious matter. He also did not think that the omission of any mention of Hindus would have led to the assumption that that religion was never affected by the problem.

The Complaints Director concluded that he could see no evidence that the programme had said that this was a Sikh problem or that audiences would have been left with an inaccurate sense of the nature of the problem.

The complainant wrote saying that he was disappointed with the decision and provided five specific points about which he remained unhappy:

- The presenter only mentioned the Sikh religion, which the complainant alleged was misleading
- No mention was made of the Hindu religion in spite of its size
- Different approaches were taken to the Muslim and Sikh contributors (in that the Sikh contributor's religion was specified but the Muslim contributors' religion was not)
- The depiction of the Sikh temple was disproportionate and unfair. Other religious buildings should have been shown.
- If religion was not the focus, why mention the Sikhs at all?

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust.

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

The Senior Editorial Strategy Adviser explained 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. The Head of Editorial Standards had read the relevant correspondence and an independent adviser had watched the programme in question.

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards took the view that the programme did not give the impression that the honour killing problem was particular to the Sikh religion or community. She acknowledged that most cases in this country happened in the Muslim community, as was made clear by the Muslim spokesman from the Crown Prosecution Service. It seemed clear to the Head of Editorial Standards that the only reason the Sikh religion was mentioned, or the temple shown, was because it happened to feature a Sikh woman who had reacted to the honour system by going public and setting up a helpline for other women in a similar position. She did not highlight being Sikh herself, nor did it seem that the programme over-emphasised this. The Head of Editorial Standards saw no evidence of a lack of impartiality in her religion being mentioned in the script and the Muslim prosecutor's being included in a quote.

The response at Stage 2 covered all these matters adequately in the view of the Head of Editorial Standards. In particular, she noted the ECU's finding that the images of the Sikh temple did not amount to more than brief background visuals and that the lack of explicit references to Hinduism could not reasonably be said to imply that the issue had never affected that religion.

She therefore decided that there was no reasonable prospect of success for the appeal.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated his view that the programme singularly and disproportionately highlighted the Sikh religion by introducing the Sikh participant as a Sikh and not doing so for any other participants who were Muslim, and by depicting a Sikh temple equally as much as a mosque. As a result, his view was that the programme portrayed the Sikh religion in a negative light and left viewers with a distorted and false picture.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the item in question.

The Committee noted the complainant's view that the programme had been biased by overly referencing the Sikh faith. The Committee noted the specific examples raised by the complainant where he felt that the Sikh religion had been treated differently from the other religions featured on the programme. The Committee noted that the Head of Editorial Standards had explained why she thought all of these matters had been covered adequately in the Stage 2 response from the Editorial Complaints Unit. The Committee agreed that the Stage 2 response had demonstrated valid reasons for introducing the Sikh participant as such and for showing a Sikh temple. The Committee agreed that the programme had made it clear that most cases of so-called "honour killings" in this country occurred in Muslim communities. The Committee agreed that the lack of explicit references to Hinduism could not reasonably be said to imply that the issue had never affected that religion, and that the other matters raised by the complainant did not

amount to evidence that the programme showed a lack of impartiality towards Sikhism. The Committee agreed that there was no reasonable prospect of success for an appeal on the basis that the programme had breached the Impartiality Guidelines.

The Committee also noted that the complainant was unhappy with the way his complaint had been handled by the BBC, and he had expressed the view that it had not been handled with the gravitas that it warranted. The Committee noted the comprehensive replies which the complainant had received from the producer of the programme and the Editorial Complaints Unit. On the basis of the evidence before it the Committee did not agree that the complaint had been handled inappropriately or had not been taken seriously by the BBC.

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

Panorama: What's Fuelling Your Energy Bills?, BBC One, 7 November 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, saying that this episode of *Panorama* had failed to explain the need to mitigate climate change and was unbalanced. The complainant said that the programme had not sufficiently covered climate change when discussing renewable energy. The complainant said that a report by KPMG which was mentioned in the programme and supported the expansion of gas usage had failed to look at how this decision would affect the UK beyond 2020 and remained unfinished.

The complainant went on to say that the former Chief Scientist, Sir David King, had recommended a greater role for nuclear power stations in meeting the UK's energy targets. There were valid reasons why the government had not chosen to pursue this, but these were not expressed. He said that, as a result, the programme's portrayal of the government being unwilling to do its best to reduce household bills was inaccurate.

In reply, BBC Audience Services said that the aim of the programme was to seek to better inform the bill-paying public of the effect which Government targets – aimed at increasing the amount of electricity generated from renewables and replacing our ageing power stations – might have on raising energy bills over the next eight years. They did not believe that the programme, which explored a subject which was clearly in the public interest, was biased against renewable energy.

The complainant wrote again to say that the programme was unbalanced in its coverage. He said that severity of climate change was neglected and it was implied that European Union and government policy on renewable energy was somehow devised to benefit only politicians whilst being of little use to society. The complainant said that those interviewed were predominantly asked about energy prices rather than the main causes for future increases in bills. The complainant questioned whether the KPMG report was finished and said that the BBC had been told by its authors that it was not. A key assertion about a possible £34 billion saving was unrealistic, in the complainant's view.

BBC Audience Services replied, saying that the programme team believed they had presented a fair, balanced and unbiased account of the issues facing UK energy policy. However, following an internal review of the programme, the BBC accepted that *Panorama* could have more clearly described the forces shaping energy prices in the present – as distinct from those that will shape them in the future. The BBC also accepted that this could have been helped by the inclusion of information on the effect of current gas prices on present fuel bills in the sections at the beginning of the programme and in some of the online material pertaining to it. As a result, the BBC was now prominently displaying on the *Panorama* website (via a link) the figure quoted by Ofgem relating to the effects of world gas prices on current domestic energy prices, as well as a statement making clear that the BBC accepted it would have been better to have included this information in the broadcast programme itself.

Audience Services went on to say that the remit of the programme was not to assess the science of climate change, but to explore the government's renewable energy and carbon reduction targets to 2020 and the likely cost implications that would result from these policies for bill payers. A wide range of potential contributors had been approached and the balance of interviewees was appropriate, in their view. The reason why nuclear power did not feature prominently in the programme was because it was not included in the Department of Energy and Climate Change's Roadmap to 2020 as it was not a renewable technology.

Stage 2

The complainant wrote to the Editorial Complaints Unit, saying that the *Panorama* programme was neither impartial nor based on sound evidence. He said the programme implied that European Union/Government policy on renewable energy was somehow devised in order to benefit only politicians. The complainant said that the great majority of experts agreed that climate change needed to be addressed urgently and in his view an impartial programme should at least have accepted that a policy designed to achieve this was important to the public. He said that a viewer with little prior knowledge would have been left with the impression that both climate change targets and those for renewable energy were relatively trivial matters.

The complainant went on to say that the programme showed a bias against renewable energy and that those interviewed were not given an opportunity to mention the importance of dealing with climate change in devising a policy on renewable energy. He added that the KPMG report "Thinking About The Affordable" had still not been published. As a result, the complainant hoped the BBC had discussed with KPMG whether it was reasonable to claim within the programme that £34 billion in savings on energy costs could be made by 2020, based on the findings within the report. The complainant alleged that this was a key statement which added to the impression given by the programme that people were paying too much for their energy due to inept government policy.

The complainant said that a KPMG press release to launch the report showed that the authors had not considered what would happen after 2020 and in his view their proposal was either impossible or enormously expensive to achieve. The complainant also said that, in his view, the report failed to consider the long term sustainability and safety advantages of renewable energy.

An ECU Complaints Director considered the complaint in relation to the Editorial Guidelines on Accuracy and Impartiality.

The Complaints Director began by looking at the complainant's concern that the severity of climate change had been neglected. He noted that the programme makers had said that the remit of the programme was to examine the factors which would affect future energy bills if the Government was to meet its renewable energy and carbon reduction targets to 2020, as set out by the Department of Energy and Climate Change's UK Renewable Energy Roadmap. The programme makers thought it was reasonable to assume that viewers would be aware that Government policy in this area was principally driven by the need to address man-made climate change.

While the ECU accepted that the arguments for tackling climate change were not stated as explicitly as the complainant would have liked, it believed viewers would have understood that this programme was about the financial consequences of the Government's energy policy rather than the reasons for moving towards renewable sources. As a result, he did not believe there was a requirement to provide the kind of environmental context that the complainant had suggested.

The Complaints Director then looked at the complainant's concern that the programme failed to reflect the fact that renewable energy was both safe and sustainable, particularly when compared to nuclear power. He did not share the complainant's impression, saying that there were several references in the programme to the fact that renewable energy was sustainable and contributors who emphasised this point.

Turning to the choice of interviewees, the Complaints Director said that, as the programme was about the financial consequences of the government meeting its renewable energy and carbon reduction targets, he did not believe there was a requirement to address other aspects of the climate change debate.

Finally, he considered the complainant's concern that, as the KPMG report had not been published, it raised doubt whether it was reasonable to use information from the report that said £34 billion in energy costs could be saved by 2020, particularly as the way in which this figure was calculated was open to question. The Complaints Director said that there were two issues to be considered: whether it was reasonable for the programme to report the findings of the KPMG report in advance of its formal publication and, if so, whether the findings were reported accurately and appropriately.

He said that it was worth noting that KPMG had a proven track record of knowledge of the energy industry and had published other reports on the sector. In addition, the report was neither commissioned nor funded by a third party. As a result, it was reasonable for *Panorama* to consider KPMG's report and refer to it in the programme as one element of a broad consideration of the economic consequences of Government energy policy.

The Complaints Director said he appreciated that KPMG had subsequently distanced itself from the report but, at the time of broadcast, its press office had confirmed to the programme that the report had been signed off. He also pointed out that the company agreed to contribute to the programme through its Head of Power and Utilities, Mark Powell.

As a result, the Complaints Director said he was satisfied there was a sound editorial justification for referring to the report and including a contribution from Mr Powell. He said that he felt the programme had accurately reflected the content of the report based on what Mr Powell said and the content of the press release which was issued. He was aware that KPMG had now questioned the assumptions used in the model. However, based on the information that was available at the time of broadcast, he was satisfied that the programme accurately reported KPMG's position. As a result, he was not able to uphold the complaint.

The complainant wrote again, saying that he disagreed with some of the ECU's findings and he had forwarded the outcome to KPMG. The complainant asked what action the BBC might take if it had broadcast misleading information through, or partly through, the fault of KPMG. He still believed that the severity of climate change warranted more attention than it was given, particularly as many viewers would not have seen previous *Panorama* programmes on the subject. He said that the programme gave the impression that policies to tackle climate change were unimportant and the public were left paying for something that only scientists wanted. The complainant said there was not a clear consensus amongst the public that action on climate change needed to be taken and he alleged that this programme had added to people's mistrust of scientists and politicians. The complainant said that the programme had not contained a single question to any climate change experts on the subject of the severity of the problem.

The Complaints Director replied, saying that, having considered the complainant's latest comments, his finding that the programme had not given a misleading impression about the severity of climate change still stood. The programme was not about the severity of climate change and so he could not conclude that there was a requirement to include a contribution about it. The BBC Editorial Guidelines were clear that due impartiality allowed for programmes to explore or report on a specific aspect of an issue.

The press office of KPMG emailed the complainant to say that the company did not wish to comment on the BBC's response to the complaint. The email also confirmed that KPMG had explained to the BBC that the assumptions and parameters used in the modelling in the report produced large swings in the financial outcomes and that it had been decided not to publish the report "to avoid any misinterpretation".

The complainant forwarded this response to the ECU, saying that he found the reasons for not publishing unconvincing and that he believed the KPMG report was flawed. He stated his belief that the programme had seriously misled the public, in part because, in his view, it relied on information which it was entitled to consider to be reliable but which was not. He said the consequences of this had been damaging as there was now increasing public opposition to renewable energy.

The Complaints Director replied to say that KPMG had been happy to be interviewed about the content of its report and to talk about its conclusions. KPMG was a reputable and internationally recognised company, so *Panorama* was entitled to present its views. The report had been published under a different name by AF Consult. He said this had attracted some criticism but since the programme reflected a range of informed views, he did not think that the inclusion of comments from KPMG was in breach of the BBC's Editorial Guidelines.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he wanted to appeal against two aspects of the ECU's findings.

First, he said the programme had given a very strong impression that rising energy bills would continue to have a far greater impact on the public than climate change. It had also implied that EU/Government policy on carbon emissions had been devised only to benefit politicians or scientists. If the programme had been impartial, it would have made clear that the policy on renewable energy was designed to help tackle climate change. The complainant believed that most members of the public did not understand the scale of action needed on climate change and that many people had a mistrust of scientists and politicians that was stoked further by programmes such as this. The ECU was unrealistic in its view of how much the general public understood about climate change.

Second, *Panorama* had said the UK could hit its carbon targets but save the public £34 billion by 2020 if the 30 per cent renewable target was ignored. The complainant said this was a key statement which added to the impression that the public was paying too much for its energy due to inept Government policy. This assumption was based on a KPMG report, which was unpublished at the time the programme was broadcast and which the company had now decided not to publish because it felt it was open to misinterpretation. The complainant said the report was unreliable and a similar report by AF Consult, which had worked with KPMG, had come under criticism. The complainant believed the programme was seriously misleading because it relied on information that it was entitled to consider reliable but, in his view, was not.

The Trust's Senior Editorial Strategy Adviser replied on behalf of the Head of Editorial Standards. She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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. The Head of Editorial Standards had read the relevant correspondence and an independent adviser had watched the programme in question. The Head of Editorial Standards had concluded 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 explained the reasons for this decision, which were as follows:

First, regarding the complainant's concerns about the programme's alleged failure to be impartial over the severity of climate change, the Head of Editorial Standards noted that the remit of the programme was not to assess the science of climate change nor the urgency of addressing it, but to explore the Government's renewable energy and carbon reduction targets to 2020 and the likely cost implications that resulted from these policies for bill payers. The opening sequence made clear that the programme was about the financial consequences of the Government's energy policy and viewers would have understood this from the start.

In this context, the Head of Editorial Standards noted that the programme's decision not to reflect more on climate change was supported by an independent review carried out last year on the BBC's coverage of science by Professor Steve Jones, Emeritus Professor of Genetics at University College London. Within this review, Professor Jones examined the BBC's impartiality when covering global warming. He noted that the BBC had put plenty of effort – and resources – into its attempts to be impartial on this subject. He acknowledged that the issue of global warming in some ways showed how hard it is to achieve due impartiality in the treatment of science and said it showed how the BBC, in its attempts to do so, may inadvertently have achieved almost the opposite. Two decades ago there was a genuine scientific debate about the reality of climate change, but now there was general agreement that warming was a fact, even if there remained uncertainties about how fast, and how much, the temperature might rise. Despite this consensus, the BBC continued to debate the evidence for and causes of climate change. However, he said that the real discussion had moved on to what should be done to mitigate climate change.

Professor Jones said he believed that the BBC coverage has been impeded by what he described as "the constant emphasis on an exhausted subject". The BBC had been over-rigid in its application of the impartiality guidelines when reporting climate change and, as a result, had failed to take in what he described as the "non-contentious" nature of climate change.

Both the BBC Trust and the BBC Executive have accepted Professor Jones' review and have agreed to build on the recommendations of this review.

Given the findings of this review, together with the programme's subject matter and remit, the Head of Editorial Standards could see why *Panorama* thought it was reasonable not to believe it needed to provide more detail on climate change. As a result, she did not believe Trustees would agree that the programme failed to be impartial.

Moving on to the complainant's concerns about the programme being misleading by using material from an unpublished KPMG report, the Head of Editorial Standards noted that the company decided against publishing it because they were worried that the model which had been used was open to misinterpretation. However, she also noted that at the time

of broadcast the KPMG press office had confirmed in an email to the programme-makers that the report had been signed off and the company had issued a press release which summarised its key findings. She noted too that the company put up a contributor for the programme, its Head of Power and Utilities, and that he was interviewed at KPMG's headquarters, in the presence of a company press officer, and confirmed the report's findings.

The Head of Editorial Standards noted that KPMG was respected in its work on the energy sector and believed that the programme did report accurately and appropriately the findings of the report that was released to them at the time of broadcast; *Panorama* did not know that KPMG would later decide not to publish its report. The Head of Editorial Standards also noted that KPMG had not said that the programme misinterpreted its data. As a result, she did not believe that Trustees would agree that the programme misled viewers.

In conclusion, the Head of Editorial Standards did not consider that any points of the appeal had a reasonable prospect of success.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He accepted that it was not necessary for *Panorama* to cover the subject of climate change in detail but continued to argue that the programme gave the impression that high energy bills were likely to be a much more severe problem to the general public in future than the effects of climate change. He also pointed out that KPMG had not said whether the programme misrepresented their data or not, and he urged the BBC to be especially thorough in seeking expert material before any future coverage of similar issues.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the item in question.

The Committee noted that the complainant had appealed to the BBC Trust regarding two aspects of the Editorial Complaints Unit's findings. The first was his allegation that the programme had given the impression that the public would face a greater impact from rising energy bills than from climate change and that policy on carbon emissions had been devised only to benefit politicians or scientists. The second was that the programme's statement regarding the ability to hit carbon targets more cheaply by ignoring renewable energy targets was based on an unpublished KPMG report which the complainant said was unreliable.

The Committee noted that the Head of Editorial Standards had considered these points and had commented that the remit of the programme was not to assess the science of climate change nor the urgency of addressing it, but to explore the government's renewable energy and carbon reduction targets to 2020 and the likely cost implications that resulted from these policies for bill payers.

The Committee agreed that the opening sequence of the programme made clear that it was about the financial consequences of the Government's energy policy and viewers would have understood this from the start. The Committee noted that the Head of Editorial Standards had explained to the complainant that the review of the BBC's coverage of science conducted on behalf of the Trust by Professor Steve Jones had

reflected on the BBC's "constant emphasis on an exhausted subject" and the "non-contentious" nature of climate change, and the fact that the debate had moved on to what should be done to mitigate climate change. The Committee agreed that, given this view, which the Trust had endorsed, and the clearly signposted remit of the programme, it was reasonable for the Panorama team to believe it did not need to provide more detail on climate change in order to achieve due impartiality. The Committee agreed that there was no reasonable prospect of success for an appeal on the basis that the programme had failed to be impartial with regard to climate change, or had implied that the impact on the public of climate change would be less than that of rising bills.

With regard to the KPMG report from which the programme had taken data, the Committee noted the Head of Editorial Standards' argument that at the time of broadcast the KPMG press office had confirmed in an email to the programme-makers that the report had been signed off and the company had issued a press release which summarised its key findings. The Committee noted the Head of Editorial Standards' view that the programme did report accurately and appropriately the findings of the report that was released to it at the time of broadcast. The Committee noted the complainant's comment that KPMG had not said whether or not the programme had misrepresented their data. The Committee considered that the absence of a comment from KPMG either way was not evidence to suggest that the data had been misrepresented by *Panorama*. The Committee concluded that there was not a reasonable prospect of success for an appeal on the basis that the programme had breached the Guidelines in its use of a report by KPMG which had subsequently been withheld from publication.

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

“London’s public land sell-off sparks concern”, BBC News Online and BBC London News, 7 March 2012

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

The complaint

Stage 1

The complainant contacted the BBC regarding a report on the BBC News website, which accompanied a BBC London News report, which he considered to be inaccurate and unbalanced. The complainant said that the report overstated the amount of local opposition to the expansion of a school onto the site of a former sports pavilion. He felt that it had not given the other side of the story, which he said was that many residents were in favour of the plan. The complainant also said the report had implied, incorrectly, that the park was being sold to property developers.

The BBC replied initially saying a response was being sought from the relevant TV team. After a period of almost two months, during which the complainant provided some further details about his complaint and chased a reply, the complainant received a response from the editor of BBC London TV News. The editor of BBC London TV News apologised for the delay, saying that he had only recently received the complaint and had been busy with the London Mayoral election coverage. He said he did not believe the coverage had misled viewers and he made the following points:

- Dundonald Rec [the example in the film under dispute] was used as a case study for a story about the loss of open spaces in London.
- It had been stressed that it was only part of the playing field that would be lost.
- It had been stated that the proposal had caused a bitter dispute locally.
- The interviews with the objectors had been balanced by the interview with the councillor who had explained the need for school places.
- The councillor had since contacted the BBC to express his appreciation of the way his side of the argument had been put.
- The shortage of school places in London was a crucial issue that had been covered many times in the past and would be again in the future.

The complainant disputed much of the argument put forward by the BBC and asked to progress the complaint to the Editorial Complaints Unit (ECU) at Stage 2 of the complaints process. He said, additionally, that organisers of objectors to the scheme stood to benefit financially by keeping the catchment area restricted. The complainant thought that this factor should have been mentioned in the piece.

Stage 2

The ECU did not uphold the complaint for the following reasons:

- The introduction and the report both referred to the sale of open spaces by London boroughs. In theory, some viewers might have assumed this was the case in the proposed development of Dundonald Rec. However, the report itself had not suggested a sale to developers. The ECU said it would have been better if the report had explicitly separated the plans for Dundonald Rec from the sale of other open spaces but it did not believe the audience would have been materially misled.
- The report did give sufficient explanation of the need for additional school places locally.
- The report reflected the existing disagreement about the amount of public space that would be lost if the development went ahead.
- Due impartiality was achieved by the report since the views of both those who opposed and were in favour of the development were represented.
- The report would have given a fuller picture if it had made clear that some residents were in favour of the Council's plan but viewers would not have been misled about the arguments.
- It was not necessary to refer in a brief news report to the possible motives of the protesters for opposing the development.

Appeal to the BBC Trust

The complainant asked the ESC to review the ECU's findings. He made the following six points in his appeal:

1. The building project which was reported on as part of this item is not a "public land sell-off", contrary to the headline/introduction.
2. The item itself did not make clear that the land had not been sold to developers.
3. Local residents are not all against the redevelopment and the pressing need for school places locally was given insufficient emphasis. The piece was biased in favour of the pressure group and against the redevelopment of land for school expansion. It did not reflect both sides of the debate – a local councillor was interviewed but "the Council is not a 'side'; it is the decision maker between the needs of different sections of the community." One section of the community was represented and the other was not.
4. Interviewees in the piece had a substantial financial interest in the school not expanding, and this was not declared.
5. The BBC should not be lending its support to what he described as "a campaign of intimidation".
6. The BBC took too long to respond to the complaint.

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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 said that the relevant correspondence had been reviewed by the Trust Unit and an independent adviser had watched the item in question.

The Senior Editorial Strategy Adviser noted that the appeal raised six elements for consideration. She said that the Head of Editorial Standards considered that two of the elements (Issues 1 and 2 above) qualified for appeal and would be considered by the ESC in September 2012. These two elements were those relating to the accuracy of the description of the project as a "public land sell-off" in the headline/introduction and whether the article had made clear that the land had not been sold to developers.

The Head of Editorial Standards concluded that the remaining issues did not qualify for appeal, and the Senior Editorial Strategy Adviser set out the Head of Editorial Standards' reasoning on each of these.

Issue 3: Allegation that the need for school places locally was given insufficient emphasis, the piece was biased against the redevelopment of land for school expansion and did not reflect both sides of the debate.

The Head of Editorial Standards noted the view of the ECU at Stage 2 that it would have given viewers a fuller picture of the dispute if it had been made clear that some residents were in favour of the Council's plan. She noted, however, that the ECU concluded that the omission of this information would not have misled viewers about the arguments both for and against the development.

The Head of Editorial Standards believed that the ESC would be likely to agree that, while the Council and local residents favouring the plan are not one and the same thing, they do, in effect, both represent the other side of the argument – that the development should go ahead because more school places are needed.

As far as the allegation of insufficient emphasis on the need for school places was concerned, she noted what the complainant had said in his appeal. However, as had already been pointed out at Stage 2, the Editorial Guidelines on Impartiality say:

"Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead we should seek to achieve due weight." (Guideline 4.4.2)

Given that the argument for more school places was put during the programme – albeit not at the length the complainant would have been happy with – the Head of Editorial Standards' view was that the ESC would be likely to find that due impartiality had been achieved in this respect.

Issue 4: Allegation that interviewees in the piece had a substantial financial interest in the school not expanding, and this was not declared.

The Head of Editorial Standards said that the complainant may or may not have been correct that financial interest is an additional, or even the prime, motive of objectors to the scheme. However, she said that there was no immediate evidence for this, and she considered that the ECU made a valid point when it observed that this was a brief news

report. She noted that the entire piece was around three minutes long and contained other cases besides Dundonald Rec.

In such circumstances, the Head of Editorial Standards did not consider that this issue would adversely affect the achievement of due impartiality. She therefore concluded that this element of the appeal did not have a reasonable prospect of success and she did not propose to put it to the ESC.

Issue 5: Allegation that the BBC was lending its support to "a campaign of intimidation".

The Head of Editorial Standards said she understood the complainant's strength of feeling on this point. However, as set out in the decisions on the points above, she believed that it would be difficult to argue that the BBC had been partial and supported any particular view, let alone "a campaign of intimidation". She therefore concluded that this element of the appeal did not have a reasonable prospect of success and she did not propose to put it to the ESC.

Issue 6: Allegation that the BBC had taken too long to respond to the complaint.

The Head of Editorial Standards acknowledged that the complainant did not receive a substantive reply from the BBC for 37 working days and noted that this clearly exceeded substantially the BBC's aim to answer most complaints within 10 working days.

However, the Head of Editorial Standards noted that the editor of BBC London TV News had apologised for the delay when he did reply and explained that he had only recently been passed the complaint from BBC News Online, and that he had been heavily involved in the London Mayoral election coverage.

The Head of Editorial Standards informed the complainant that the Trust had recently completed a review of the BBC's Complaints Framework. She said the Trust hoped that this would lead to improvements in the efficiency of handling complaints at the first stage and cut down on delays, and the Trust would be keeping this under review.

For these two reasons – the apology already provided by the BBC and the changes in procedure which are already in hand – the Head of Editorial Standards considered that this element of the complaint had been resolved, and she did not propose to put it to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with four elements of his appeal (Issues 3 to 6 above). He reiterated his view that the BBC did not give due weight to the need for local school places, saying that it had not interviewed any of the people who would be affected by a lack of such places. He said that the tone of the piece would have been different if a mother and child had been chosen as interviewees rather than the council official.

With regard to the alleged motivation of the objectors to the scheme, the complainant said that it was unnecessary for him to provide evidence that their motivation was financial. In his view, their interests should have been disclosed in the report anyway.

The complainant alleged that background research would have revealed that some individuals had engaged in intimidating behaviour. He said it was his view that it was insufficient for the report to describe the issue as a "bitter dispute", and that the omission of background research meant that the report did not give a true picture of the situation. The complainant noted that the Head of Editorial Standards had concluded that the report had not supported either side in the dispute; however, he said that if the Committee

upheld the elements which were proceeding to appeal, this would show that the report was biased in favour of the "Save Our Rec" campaign.

With regard to the complaint about the delay at Stage 1, the complainant argued that the London Mayoral election was "business as usual" for BBC News and therefore was not a reasonable explanation for the delay. He also commented on the revised complaints process and questioned whether it would prevent the issues he experienced. The complainant argued that, while the Head of Editorial Standards had judged that the other parts of his appeal had little prospect of success, the poor handling had been acknowledged by the BBC and should therefore have a high chance of success.

The Committee's decision

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

The Committee noted that the Head of Editorial Standards had accepted the complainant's appeal with regard to the accuracy of the headline/introduction of the television and web items, and also with regard to the complainant's allegation that the items did not make clear that the land had not been sold to developers (Issues 1 and 2 above).

The Committee considered the complainant's challenge to the Head of Editorial Standards' decision not to proceed with the remaining aspects of the appeal. The Committee noted the complainant's allegations that the need for school places locally was given insufficient emphasis, that the piece was biased against the redevelopment of land for school expansion and that it did not reflect both sides of the debate. The Committee noted the complainant's view that the council was not a "side" in the dispute and that the piece should have included an interview with somebody who would have been affected by a lack of such places. The Committee agreed that, while the Council and local residents favouring the plan are not one and the same thing, they do, in effect, both represent the other side of the argument – that the development should go ahead because more school places are needed. The Committee agreed that the lack of inclusion of the voice of a local resident in favour of the development was not likely to have misled viewers about the arguments both for and against the development.

With regard to the complainant's allegation that there was insufficient emphasis on the need for school places, the Committee was mindful that the Impartiality Guidelines do not require the range of perspectives or opinions on an issue to be covered in equal proportion. The Committee agreed that, given the argument for more school places was put during the programme, it would be unlikely to find that the requirement for due impartiality had not been met.

The Committee noted the complainant's allegation that interviewees in the piece had a substantial financial interest in the school not expanding, and that this had not been declared. The Committee noted the Head of Editorial Standards' view that there was no immediate evidence that financial interests are an additional, or even the prime, motive of objectors to the scheme. The Committee noted the complainant's response that whether or not there was evidence that this was the motivation, the financial interests of the objectors should have been declared. The Committee agreed that, in a relatively brief item, the focus of which was not an investigation into this particular development, it would not be likely to uphold an appeal on the basis that this information was missing from the report.

With regard to the complainant's allegation that the BBC was lending its support to "a campaign of intimidation", the Committee considered that, taking into account its view on the other allegations which the Head of Editorial Standards had rejected, it was not likely to conclude that the piece had been biased towards a particular side of the dispute. The Committee noted the complainant's argument that if the Committee upheld any of the aspects which it was considering on appeal this would support his claim of bias. The Committee did not agree that this would necessarily follow from its consideration on appeal of the specific alleged breaches of the Accuracy Guidelines.

The Committee then considered the complainant's request for an appeal regarding the handling of his complaint at Stage 1. The Committee agreed that the lengthy delay had been regrettable and it wished to add its apology to that already given by the editor of BBC London TV News. While the Committee noted that the complainant disputed the contribution of the London Mayoral elections to the delay, it accepted that this would have been an exceptionally busy period for the London News team. The Committee also noted that the complainant had referred to the BBC's acknowledgement of the poor handling of his complaint and had said his appeal should therefore have a high chance of success. However, the Committee agreed that it would be likely to find that the handling issues had been resolved by the apology already provided by the BBC and the changes in procedure which are already in hand. The Committee therefore agreed that the complainant's appeal did not have a reasonable prospect of success. It also considered that it would not be proportionate or cost effective for it to consider the complaint on appeal.

The Committee therefore decided these elements of the appeal did not qualify to proceed for consideration.

Bang Goes the Theory, BBC One, 3 October 2011

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

Appeal to the BBC Trust

The complainant appealed to the Trust following the Editorial Complaints Unit's finding on his complaint. In his appeal the complainant made the following specific allegations about the episode of *Bang Goes the Theory* broadcast on 3 October 2011:

- the projection of total fatalities as a result of radiation exposure from Chernobyl was a misrepresentation of the evidence
- the programme minimised the health risks of radiation by not addressing the "more significant and contentious issue" of secondary late effects and by failing to report the scale of Post-Chernobyl thyroid cancer incidence
- the statement by a contributor predicting a "zero" final death toll from exposure to radiation post Fukushima should have been questioned or balanced; the imbalance was compounded by the graphical representation of a "zero" and a musical crescendo

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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.

The Head of Editorial Standards noted that in its Stage 2 finding the Editorial Complaints Unit (ECU) upheld a breach of accuracy in relation to the first point. Quoting both the Chernobyl Forum and United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), the ECU concluded that the programme had presented the 122 figure of total fatalities as definitive, whereas certainty is lacking.

The Head of Editorial Standards considered that this point would be regarded by Trustees as having been resolved and she therefore concluded that it did not qualify to proceed to appeal.

The Head of Editorial Standards said that the remaining points would proceed to be considered by the Editorial Standards Committee on appeal. She explained that the Committee would be advised of the breach of the Accuracy Guidelines already upheld by the ECU would take this into account when reaching a decision on the remaining points.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with this element of his appeal. He said that, while the ECU had upheld the complaint with regard to the accuracy of the figure given for projected Chernobyl deaths, it had not upheld his complaint that there was a breach of the Impartiality Guidelines in relation to this issue.

The Committee's decision

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

The Committee noted the complainant's point that, in its finding with regard to the presentation of the death tolls from Chernobyl and Fukushima, the ECU had concluded that the audience would not have been misled with regard to the range of opinion on the risks associated with low level radiation.

The Committee noted that the complainant had appealed against this decision of the ECU and agreed that this would be taken into account when the remaining elements of the appeal came to it for consideration.

The Committee noted that the specific element of the appeal turned down by the Head of Editorial Standards was that relating to the accuracy of the projected figures for the Chernobyl radiation death toll, which had been upheld by the ECU. The Committee noted that, while the question of the accuracy of the figure would not be reconsidered by the Committee, the ECU uphold on this point would be taken into account in the Committee's consideration of the remaining points, including the impartiality of the programme.

The Committee agreed that, given the ECU uphold on accuracy, the complainant's appeal in relation to this element of his complaint did not have a reasonable prospect of success. The Committee also agreed that it would not be appropriate, proportionate or cost effective for the Trust to consider the same allegation again.

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

Rights Gone Wrong, BBC Two, 14 March 2012

The complainant appealed to the Editorial Standards Committee (ESC) 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 Two programme *Rights Gone Wrong*. He said the programme should not have interviewed an anti-forced marriage campaigner against the backdrop of what he described as a Muslim area of Leeds. He also said that the programme should have mentioned that the campaigner, a victim of forced marriage herself, was Sikh. The complainant said the programme should have explicitly stated that the issue of forced marriage can affect many communities including Muslim, Sikh and Hindu.

The BBC replied with a response from the programme makers which explained that the interview was filmed in the streets in which the campaigner's charity is based. While some of those seen in the streets may have been Muslims, no reference was made in the script to any religion. The programme makers said this was because:

"...as you rightly say forced marriage is a problem not limited to one religious group. We are therefore confident that the choice of both words and pictures did not lay over emphasis on any particular religion whilst understandably providing the context that the cases Jasvinder and her team deal [with] predominately come from a range of British South Asian communities."

The complainant replied, saying that the only shots of a religious nature were of a Mosque and what he described as people who probably looked Muslim to most viewers. He argued that not mentioning any particular religion made the matter worse as he claimed the visual references put an over emphasis on the issue as being a Muslim one. The complainant alleged that the programme was biased against Muslims and Islam.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) at Stage 2, stating his concern that a lack of balance in the background shots may lead viewers to wrongly conclude that the issue of forced marriage is an exclusively Muslim/Islamic one.

The complainant said he thought the programme had breached the Impartiality and Accuracy Guidelines, in particular those in relation to misleading audiences.

An ECU Complaints Director investigated the complaint and replied with his decision. The Complaints Director said that he did not share the complainant's impression that the footage used would have led viewers to believe that this was a purely Muslim problem. He noted that there was nothing in the presenter's script or the contribution from the campaigner which referred to any particular religion or ethnic group in relation to forced marriage.

He said that, for the programme to be seriously misleading, it would have to have had "...specific verbal and/or visual references to Islam linking it, and only it, to forced marriages". He noted that there were no verbal references to any culture, faith or ethnic

group and so nothing which might lead the viewer to an understanding that forced marriages were only an issue for one particular religion.

The Complaints Director said he thought it reasonable to assume that the audience would have been concentrating on the interview and he noted that the background images were “peripheral or fleeting” and hence would not have given the misleading impression which the complainant alleged. He did not think the programme had been biased against Muslims or Islam for the same reasons.

The complainant restated his concerns and said they could have been avoided by the use of a neutral background. The Complaints Director said there was little he could add in response and advised the complainant to appeal to the BBC Trust if he was still concerned.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying he had been unhappy with the ECU finding because it did not dispute his allegation that the background material only referenced – or appeared to reference – Muslims/Islam, even if these references were fleeting. He said “the short duration of something biased does not stop it from being biased.”

The complainant said he accepted that the programme did not directly link forced marriage and Islam but he was concerned that it did so indirectly by the use of background imagery. He said that this could have been avoided by the use of a neutral background and this is why he was concerned about bias.

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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. The Senior Editorial Strategy Adviser said that an independent editorial adviser had watched the programme with the complainant’s criticism in mind. The independent editorial adviser had noted that this was a programme shot wholly on location and “out-and-about”, with the presenter appearing to be constantly on the move throughout, walking or riding through many different communities and locations.

The Trust’s Senior Editorial Strategy Adviser explained that, given the context of the programme’s style and content, the Head of Editorial Standards considered that there was no reasonable prospect that the ESC would uphold the complaint of a breach of the Editorial Guidelines on accuracy or impartiality on the basis of a few background shots of some people who might (or might not) be Muslim and a street which included a mosque.

The Head of Editorial Standards considered it likely that the ESC would concur with the ECU’s finding at Stage 2 that there would need to be a much more specific reference to religion and the relationship between Islam and forced marriage than there was in this instance for there to be a case that there was a breach of the Editorial Guidelines. The Head of Editorial Standards concluded that the complaint had no reasonable prospect of success and she did not propose to put it to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He said that the BBC did not dispute his claim that the background shots only visually referenced Muslims/Islam and he

therefore found it surprising that the Head of Editorial Standards had concluded that there was no reasonable prospect of success for the complaint on appeal. He repeated his argument that the fact something is “peripheral and fleeting” does not stop it being biased.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant’s letter asking the Committee to review the Head of Editorial Standards’ decision. The Committee was also provided with the programme in question.

The Committee agreed that it was correct to consider the shots about which the complainant was concerned in the context of the whole item. The Committee noted the programme’s stated reason for filming in this location, namely that it was where the interviewee’s charity is based. The Committee noted that the programme presented a wide range of images and locations and did not refer to any specific religion in the script. The Committee considered that, even accepting that the shots in question were exclusively of Muslims, a fact which had not been established and which the audience would not necessarily take to be the case, this would not be sufficient evidence to conclude that the programme was biased. The Committee agreed that there would need to be a much stronger emphasis on one particular religion for there to be a case that the Impartiality Guidelines had been breached. The Committee agreed that there was no reasonable prospect of success for this complaint on appeal.

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

BBC Midlands Today, BBC One 11 April 2011

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

The complaint

Stage 1

The complainant wrote to the BBC regarding a *Midlands Today* report about a poster erected in Gloucester by People for the Ethical Treatment of Animals (PETA). The complainant said that a nutritionist who had appeared on the programme had been inaccurate in saying there were nutrients essential to humans which can only to be found in meat.

The programme team replied saying that the report included a clip from a PETA spokesperson who said there was scientific evidence to show that vegan and vegetarian diets led to lower rates of obesity, heart disease and blood pressure. To balance this, a professional nutritionist from Gloucestershire had also been featured, who said that meat contained essential nutrients and that it was possible to lose weight while including meat in your diet.

The programme team acknowledged that the reporter in their lunchtime bulletin should not have said that meat was the only way to get those nutrients as they are also found in supplements and supplemented vegan products. The programme team said this line had been removed from the evening bulletin and was not repeated.

The programme team concluded by saying that the nutritionist in the programme was qualified to comment as she was registered as a dietitian with The Health Professions Council and was an active member of The British Dietetic Association.

In response to a further email in which the complainant argued that the programme should broadcast a correction, the Editor of the programme said that appropriate measures had been taken to rectify the error and suggested that the complainant contact the Editorial Complaints Unit (ECU) if she wished to pursue the complaint further.

Stage 2

The complainant contacted the ECU to pursue her complaint. She repeated her view that a correction to what she described as "the inaccurate statement" should be broadcast live on *BBC Midlands Today*.

An ECU Complaints Director considered the complaint in relation to the Accuracy Guidelines and wrote to the complainant with the outcome of his investigation. The Complaints Director began by saying that he wanted to make clear from the outset that he agreed with the complainant that the reporter had been inaccurate when saying at the end of his report:

"Nutritionists say that a vegan and vegetarian diet is a healthy choice but it does lack essential nutrients only found in meat."

The Complaints Director said that, although it is true that a vegan or vegetarian diet may not contain sufficient quantities of nutrients such as Vitamin B12, iron and zinc, it is not

the case that such vitamins and minerals can only be found in meat. The Complaints Director said that this aspect of the report did not meet the standards for due accuracy.

The Complaints Director said he had discussed the complainant's concerns with the Editor of *BBC Midlands Today* and the reporter concerned. He said that the Editor had made the point that the report was substantially re-edited for the evening bulletin. In this later bulletin, the reporter referred to a new report which said diets high in red meat can shorten life expectancy and included a nutritionist who confirmed the benefits of a vegan or vegetarian diet while also making clear that dairy and meat are a source of important nutrients.

The Complaints Director noted that the complainant believed an on-air correction was necessary to address the original inaccuracy, but he said that he felt the changes made to the subsequent bulletin were an appropriate response and that he did not believe any further action was required.

The Complaints Director explained that broadcast corrections were usually considered only when the inaccuracy in question had resulted in unfairness to some individual or organisation or where it seriously affected the understanding of the audience. He said that, in this case, the original report had reflected the benefits of a meat-free diet, particularly in the context of fighting obesity. As a result, he said he believed that the issue raised by the complaint had been resolved.

Appeal to the BBC Trust

The complainant contacted the BBC Trust to say that she believed the ECU was wrong in its decision not to correct the inaccuracy by an on-air correction and that it had also been inaccurate in the claims it had made in its letter. The complainant quoted various authorities as saying a vegetarian or vegan diet provided the necessary vitamins and minerals to meet one's nutritional needs.

The complainant said that the statement made on the lunchtime programme and the lack of an on-air apology undermined her campaigning to promote the health benefits of vegan food. She said this inaccuracy had effectively deemed her as a liar and had continued to discriminate against her belief system.

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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.

The Senior Editorial Strategy Adviser said that the relevant correspondence had been reviewed by the Trust Unit and that an independent editorial adviser had also read the correspondence and the transcript. The Senior Editorial Strategy Adviser said that the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success and did not propose to proceed in putting the appeal to the ESC.

The Head of Editorial Standards noted that the reporter for *BBC Midlands Today* concluded his report in the programme's 13:30 bulletin by saying:

"So while everyone would agree that tackling obesity is a good thing, by the state of what's left of this poster, not everyone thinks that this is the best way to get

the message across. Nutritionists say that a vegan and vegetarian diet is a healthy choice, but it does lack essential nutrients only found in meat.”

She noted that both the programme and the ECU had acknowledged that the reporter’s final sentence was inaccurate. She noted that this line was removed from the 18:30 bulletin and was not repeated.

The Head of Editorial Standards noted too that the conclusion of the report was re-edited to say:

“While no-one will argue that obesity has to be tackled, it seems that by the state of this poster, some think this isn’t the way to get the message across. However, a recent study by the Harvard Medical School said that diets high in red meat can shorten life expectancy, so is a vegan diet really the way forward?”

The Head of Editorial Standards noted that the ECU had explained that broadcasting a correction is usually considered only when the inaccuracy in question has resulted in unfairness to some individual or organisation or where it seriously affects the understanding of the audience.

The Head of Editorial Standards also noted that the 13:30 report included a PETA spokesperson who said there was scientific evidence to show that vegan and vegetarian diets led to lower rates of obesity, heart disease and blood pressure. The Head of Editorial Standards concluded that the audience would have understood that there were benefits to such diets.

The Head of Editorial Standards said she believed that Trustees would consider that the programme, having acknowledged the inaccuracy in its lunchtime bulletin, corrected the mistake quickly and appropriately by removing the line and reworking the item for its 18.30 bulletin. As a result, she did not believe that Trustees would conclude the BBC Editorial

Guidelines had been breached with regard to correcting mistakes.

The Head of Editorial Standards noted that the complainant believed it was inaccurate for the ECU to say that vegetarian or vegan diets “may not contain sufficient quantities of nutrients such as Vitamins B12, iron and zinc”.

Having read the correspondence and asked an Independent Editorial Adviser to carry out some internet research, the Head of Editorial Standards believed this was intended to reflect the fact

that, while a vegan or vegetarian diet which is appropriately planned will be nutritionally adequate, a vegan or vegetarian diet which is not appropriately planned may well not.

The Head of Editorial Standards said that this is a genuine issue of concern when it comes to such diets. She noted that the Vegan Society website devotes a section to the importance of “a healthy well-planned diet” including a range of booklets to achieve it.

The Head of Editorial Standards noted too that The Vegetarian Society website also contains a section on health and nutrition.

As a result, the Head of Editorial Standards did not agree that the ECU was inaccurate in its response.

The Head of Editorial Standards then considered the complainant’s allegation that the statement made on the programme and the lack of an on-air apology undermined her, effectively deemed her as a liar and discriminated against her belief system. The Head of Editorial Standards explained that on-air corrections relating to fairness involve content

where individuals or organisations have been directly affected. The Head of Editorial Standards noted that the complainant was not named personally in the programme and did not consider that the threshold for making a fairness complaint (thereby requiring an on-air apology) had been met in this case.

The Head of Editorial Standards did not therefore consider that there was a reasonable prospect of success for the appeal, and she did not propose to put it before the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal, stating that the reasons for her appeal still stood.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the relevant programmes.

The Committee noted that the BBC had accepted that the lunchtime broadcast had been inaccurate and that the evening broadcast of the report had been re-edited in order to remove the inaccuracy. The Committee noted the ECU's acknowledgment that the lunchtime report had been inaccurate and its conclusion that the action which had been taken had resolved the issue. The Committee agreed that this appeared to be appropriate and timely action in response to the inaccuracy and that there was not a reasonable prospect of success for an appeal on the basis that the Editorial Guidelines had been breached with regard to correcting mistakes.

The Committee noted the complainant's view that an on-air correction of the original inaccuracy was necessary. The Committee agreed that on some occasions on-air corrections are appropriate. However, for the reasons set out by the ECU and the Head of Editorial Standards, the Committee was satisfied that in this case the amendments made to the evening bulletin were a proportionate response to the inaccuracy. The Committee noted the complainant's argument that the inaccuracy had resulted in unfairness to her as a campaigner for the health benefits of vegan food. The Committee agreed that, as the complainant was not named personally in the programme, the inaccuracy would be unlikely to result in unfairness to her as a campaigner for the health benefits of vegan food. Therefore, the Committee concluded that it would be unlikely to find that an on-air apology was required.

The Committee noted that the complainant had taken issue with the ECU's statement that a vegan or vegetarian diet may not contain sufficient quantities of nutrients such as Vitamin B12, iron and zinc. The Committee considered that it was reasonable to state that a vegan diet may lack sufficient quantities of these nutrients, which is not the same as saying that an appropriately planned vegan diet can never provide these nutrients.

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

BBC Midlands Today, BBC One 11 April 2011

The complainant appealed to the Editorial Standards Committee (ESC) 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 a *BBC Midlands Today* report was wrong to state that there were essential nutrients only found in meat. The complainant said that the BBC should be getting registered dieticians to comment on nutrition stories.

In a further email the complainant said that, while the BBC had acknowledged that the reporter had made a mistake, the programme had not made an on-air correction. The complainant also said that the interviewees chosen by the programme had been biased against vegan diets.

The BBC replied, saying that the programme had included an interview with a spokesperson from PETA, who said that scientific evidence showed that a vegan or vegetarian diet led to lower rates of obesity, heart disease and blood pressure. To balance that claim, the programme also spoke to a nutritionist who pointed out that meat contains essential nutrients and said that it was possible to lose weight while including meat in your diet.

The BBC said that the programme team was aware that the reporter in the 13:30 edition should not have said meat was the only way to get some essential nutrients, as these can also be provided via supplements and supplemented vegan products. The BBC said that the programme removed the line from its 18:30 edition and it was not repeated. The BBC concluded that appropriate measures were taken to ensure the mistake was rectified and that the 18:30 edition explored the subject in a fair and accurate manner.

The complainant replied, saying that if the nutritionist was telling people that meat contains essential nutrients, then she should also have said the same about vegan food. The complainant said that the crucial point of his complaint was that *BBC Midlands Today* had breached the rules on Accuracy and, as a result, the programme should have broadcast an on-air correction.

The programme team said that it continued to believe that it had taken appropriate measures to rectify the error made in its 13:30 programme and that it went to great lengths to amend the item in question.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit (ECU) at Stage 2 of the BBC's complaints process.

An ECU Complaints Director considered the complaint in relation to the Accuracy Guidelines and wrote to the complainant with the outcome of his investigation. The Complaints Director began by saying that he wanted to make clear from the outset that he agreed with the complainant that the reporter had been inaccurate when saying at the end of his report:

“Nutritionists say that a vegan and vegetarian diet is a healthy choice but it does lack essential nutrients only found in meat.”

The Complaints Director said that, although it is true that a vegan or vegetarian diet may not contain sufficient quantities of nutrients such as Vitamin B12, iron and zinc, it is not the case that such vitamins and minerals can only be found in meat. The Complaints Director said that this aspect of the report did not meet the standards for due accuracy.

The Complaints Director said he had discussed the complainant’s concerns with the Editor of *BBC Midlands Today* and the reporter concerned. He said that the Editor had made the point that the report was substantially re-edited for the evening bulletin. In this later bulletin, the reporter referred to a new report which said diets high in red meat can shorten life expectancy and included a nutritionist who confirmed the benefits of a vegan or vegetarian diet while also making clear that dairy and meat are a source of important nutrients.

The Complaints Director noted that the complainant believed an on-air correction was necessary to address the original inaccuracy, but he said that he felt the changes made to the subsequent bulletin were an appropriate response and that he did not believe any further action was required.

The Complaints Director explained that broadcast corrections were usually considered only when the inaccuracy in question had resulted in unfairness to some individual or organisation or where it seriously affected the understanding of the audience. He said that, in this case, the original report had reflected the benefits of a meat-free diet, particularly in the context of fighting obesity. As a result, he said he believed that the issue raised by the complaint had been resolved.

The complainant replied, saying that the ECU was wrong in its decision that an on-air correction was not appropriate and that it had also been inaccurate in the claims it had made in its response. The complainant said it was not right to say that vegetarian or vegan diets may not contain sufficient quantities of nutrients such as Vitamins B12, iron and zinc. The complainant quoted the American Dietetic Association as saying that an appropriately planned vegetarian or vegan diet was both healthy and nutritionally adequate as well as providing health benefits in the prevention and treatment of certain diseases.

The complainant also said that he considered he had been unfairly treated since he had personally distributed over ten thousand leaflets about the health benefits of a vegan diet. He therefore considered that he would be thought a liar by someone who had listened to the 13.30 report. The complainant sent an additional email to the ECU to provide further information on the nutritional value of such diets.

The ECU replied, accepting that it is entirely possible to be a vegan without any supplements in tablet form, but that its finding did not say otherwise. It said the finding was intended to reflect the fact that, while a vegan or vegetarian diet which is appropriately planned will be nutritionally adequate, a vegan or vegetarian diet which is not appropriately planned may well not.

Appeal to the BBC Trust

The complainant sent the BBC Trust a copy of his response to the ECU’s decision. In a further email he said that the ECU’s statement that it “is not the case that such vitamins and minerals can only be found in meat” was not clear enough. The complainant said that just following a healthy vegan diet was sufficient, without the need for tablets. The

complainant said that the ECU's response was biased against vegans.

The complainant said that the modified broadcast later in the day had not corrected the inaccuracy and had in fact made it "even more 'unresolved'" and more biased against vegans.

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

She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of 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.

The Senior Editorial Strategy Adviser said that the relevant correspondence had been reviewed by the Trust Unit and that an independent editorial adviser had also read the correspondence and the transcript. The Senior Editorial Strategy Adviser said that the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success and did not propose to proceed in putting the appeal to the ESC.

The Head of Editorial Standards noted that the reporter for *BBC Midlands Today* concluded his report in the programme's 13:30 bulletin by saying:

"So while everyone would agree that tackling obesity is a good thing, by the state of what's left of this poster, not everyone thinks that this is the best way to get the message across. Nutritionists say that a vegan and vegetarian diet is a healthy choice, but it does lack essential nutrients only found in meat."

She noted that both the programme and the Editorial Complaints Unit had acknowledged that the reporter's final sentence was inaccurate. She noted that this line was removed from the 18:30 bulletin and was not repeated.

The Head of Editorial Standards noted too that the conclusion of the report was re-edited to say:

"While no-one will argue that obesity has to be tackled, it seems that by the state of this poster, some think this isn't the way to get the message across. However, a recent study by the Harvard Medical School said that diets high in red meat can shorten life expectancy, so is a vegan diet really the way forward?"

The Head of Editorial Standards noted that the ECU had explained that broadcasting a correction is usually considered only when the inaccuracy in question has resulted in unfairness to some individual or organisation or where it seriously affects the understanding of the audience.

The Head of Editorial Standards also noted that the 13:30 report included a PETA spokesperson who said there was scientific evidence to show that vegan and vegetarian diets led to lower rates of obesity, heart disease and blood pressure. The Head of Editorial Standards concluded that the audience would have understood that there were benefits to such diets.

The Head of Editorial Standards said she believed that Trustees would consider that the programme, having acknowledged the inaccuracy in its lunchtime bulletin, corrected the mistake quickly and appropriately by removing the line and reworking the item for its

18.30 bulletin. As a result, she did not believe that Trustees would conclude the BBC Editorial Guidelines had been breached with regard to correcting mistakes.

The Head of Editorial Standards noted that the complainant believed it was inaccurate for the ECU to say that vegetarian or vegan diets “may not contain sufficient quantities of nutrients such as Vitamins B12, iron and zinc”.

Having read the correspondence and asked an Independent Editorial Adviser to carry out some internet research, the Head of Editorial Standards believed this was intended to reflect the fact

that, while a vegan or vegetarian diet which is appropriately planned will be nutritionally adequate, a vegan or vegetarian diet which is not appropriately planned may well not. The Head of Editorial Standards said that this is a genuine issue of concern when it comes to such diets. She noted that the Vegan Society website devotes a section to the importance of “a healthy well-planned diet” including a range of booklets to achieve it. The Head of Editorial Standards noted too that The Vegetarian Society website also contains a section on health and nutrition.

As a result, the Head of Editorial Standards did not agree that the ECU was inaccurate in its response. Nor did the Head of Editorial Standards agree that the ECU’s response to the complainant was biased against vegans.

The Head of Editorial Standards did not believe Trustees would find that there is any persuasive evidence of bias against vegans in respect of the Midlands Today bulletins. As explained above, the audience would have been aware of both the potential benefits and risks of such a diet.

Overall, the Head of Editorial Standards did not consider that there was a reasonable prospect of success for the appeal, and she did not propose to put it before the ESC.

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 appeal raised a “matter of substance” as it concerned animal exploitation and the BBC had accepted that an error was made. The complainant said that, as a vegan campaigner, the BBC’s inaccuracy would have made him appear to be a liar. The complainant also reiterated his argument that a vegan diet is not deficient in any nutrients.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant’s letter asking the Committee to review the Head of Editorial Standards’ decision. The Committee was also provided with the relevant programmes.

The Committee noted that the BBC had accepted that the lunchtime broadcast had been inaccurate and that the evening broadcast of the report had been re-edited in order to remove the inaccuracy. The Committee noted the ECU’s acknowledgment that the lunchtime report had been inaccurate and its conclusion that the action which had been taken had resolved the issue. The Committee agreed that this appeared to be appropriate and timely action in response to the inaccuracy and that there was not a reasonable prospect of success for an appeal on the basis that the Editorial Guidelines had been breached with regard to correcting mistakes.

The Committee noted the complainant’s view that an on-air correction of the original

inaccuracy was necessary. The Committee agreed that on some occasions on-air corrections are appropriate. However, for the reasons set out by the ECU and the Head of Editorial Standards, the Committee was satisfied that in this case the amendments made to the evening bulletin were a proportionate response to the inaccuracy. The Committee noted the complainant's argument that the inaccuracy had resulted in unfairness to him as a vegan campaigner. In particular, the Committee noted the complainant's view that he was "effectively deemed a liar by the BBC" because he leaflets homes with vegan leaflets saying that the diet is healthy. However, the Committee agreed that, as the complainant was not named personally in the programme, the inaccuracy would be unlikely to result in unfairness to him as a vegan campaigner. Therefore, the Committee concluded that it would be unlikely to find that an on-air apology was required.

The Committee noted that the complainant had taken issue with the ECU's statement that a vegan or vegetarian diet may not contain sufficient quantities of nutrients such as Vitamin B12, iron and zinc. The Committee considered that it was reasonable to state that a vegan diet may lack sufficient quantities of these nutrients, which is not the same as saying that an appropriately planned vegan diet can never provide these nutrients.

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