

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

***Panorama: What's Fuelling Your Energy Bill?*, BBC One, 7 November 2011**

This appeal was considered at a meeting of the Editorial Standards Committee on 5 July 2012.

The complainant said that an edition of *Panorama* had inadequately summarised a response from the office of Tony Blair to an allegation from a contributor to the programme that Mr Blair's commitment to a 15 per cent renewable energy target had been a "gaffe". The complainant made other allegations about the programme but the Committee had decided previously that these points did not qualify for consideration on appeal.

The Committee concluded:

- that, while the response from Mr Blair's office could have been more fully represented in the programme, the summary had contained the main elements of the written statement from Mr Blair's office and had been duly accurate.
- that, in putting the allegation to Mr Blair's office, and in including a summary of the response, the programme had considered all the relevant facts and information and had fulfilled the requirements of the guidelines on Accuracy.
- that there was no case for a breach of the Guidelines on Impartiality.

The complaint was not upheld.

For the finding in full see pages 5 to 8.

***Top Gear*, BBC One, 5 February 2012, 8pm**

The appeal concerns an episode of *Top Gear* which included comments about people with "growths on their faces" in an item about a new campervan. The complainant said that the item was "offensive, prejudicial and unacceptable". The complainant also expressed the view that the BBC's Editorial Guidelines should be updated to include specific consideration for under-represented groups of people in British society, including those with facial disfigurements.

The Committee concluded:

- that the audience would have understood the connection which the presenters drew between the character played by John Hurt in *The Elephant Man* and the design of the Prius campervan, and that the joke at this point was about the vehicle's design.
- that the slurred speech used by Jeremy Clarkson was also part of this reference to *The Elephant Man*, but that this mimicry was on the margins of acceptability.
- that, while most of the comments made about the campervan would have not exceeded the expectations of the audience, a remark about talking to "a car" at a party and not being able to look at a person with a facial disfigurement, taken with the reference to "...one of those really ugly things ... I'm talking about a growth...", strayed into an offensive stereotypical assumption not confined to *The Elephant Man*.

- that the programme was in breach of the Guidelines on Harm and Offence as the exchanges about facial disfigurement noted above were not editorially justified and did not meet generally accepted standards in the context of their portrayal of a disability.
- that the Editorial Guidelines and corresponding Guidance together give sufficient and appropriate guidance to programme-makers on the issue of the portrayal of minorities and vulnerable social groups and it was not necessary to change the Guidelines in the way that the complainant had suggested.

The complaint was upheld.

For the finding in full see pages 9 to 14.

Complaint handling

The complainant appealed to the BBC Trust regarding alleged bias in the pre-match coverage of a football match between Falkirk and Celtic. The Editorial Standards Committee decided that the substance of the complaint did not qualify for consideration on appeal, but it agreed to consider on appeal the complaint regarding a long delay in the response to the complaint at Stage 2.

The Committee concluded:

- that the lack of an explanation or an apology for an unacceptable delay in the Stage 2 response constituted a breach of the Guidelines on Accountability which state that complaints should be responded to quickly, courteously and with respect.

The complaint was upheld.

For the finding in full see pages 15 to 17.

Appeal Findings

Panorama: What's Fuelling Your Energy Bill?, BBC One, 7 November 2011

1. Background

This edition of *Panorama* set out to examine how government policies aimed at increasing energy from renewable sources were likely to push up the price of Britain's energy bills over the next eight years.

The programme included allegations from civil servants criticising the role of the former Prime Minister, Tony Blair, in committing the UK to a 15 per cent target for renewable energy. The programme said it had spoken to an anonymous civil servant who said that Mr Blair was advised that the maximum the UK could commit to was 15 per cent of renewable electricity. But the programme said Mr Blair emerged from the meeting having virtually tripled the challenge by agreeing to 15 per cent of all energy being renewable. In particular, the programme included a statement from the former Chief Scientist, Sir David King, that in his opinion it was possible Mr Blair had made "a gaffe".

The programme contained a one sentence rejection of these charges from Mr Blair's Office. It stated:

"Tony Blair's Office told us it wasn't a gaffe but a decision to protect the environment and help energy security."

2. The complaint

The complainant noted that the full written statement provided by Mr Blair's Office for the programme actually read:

"This was not a gaffe. It was a decision to make a strong commitment to renewable that was backed up by other EU nations such as Germany. It gave us a leading position in that area that Tony Blair believed was important for the future and which would help in the long term to protect us against rising energy costs and promote action on the environment."

The complainant alleged that the programme's summary of the full written statement was neither accurate nor impartial and that it severely weakened the rebuttal provided by Mr Blair's office.

The complainant raised other points alleging that the programme was inaccurate and not impartial but the Editorial Standards Committee decided at its meeting on 14 June 2012 that these did not qualify for consideration on appeal. Details of these elements and the Committee's decision not to take them on appeal have been published in the June 2012 ESC bulletin at

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

The bulletin also sets out further information about the background of the complainant's appeal, including details about how the complaint was handled at Stages 1 and 2 of the complaints process.

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.

Section 4: Impartiality

4.2 Principles

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

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

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

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

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

4. The Committee's decision

The Committee considered the complaint against the relevant standards, as set out in the BBC's editorial guidelines and the BBC Trust's Complaints Framework.

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

This appeal raised issues requiring consideration of the guidelines relating to Accuracy and Impartiality and, in particular, whether the content was presented in clear, precise language and avoided unfounded speculation. It also considered whether the BBC had misled its audience.

Accuracy

The Committee began by looking at how the BBC had summarised the statement issued by Mr Blair's office to rebut claims from civil servants that he had made "a gaffe" by committing the UK to a target of 15 per cent for renewable energy by 2020 at a meeting of the Heads of State of the European Union in 2007.

It noted that the full statement from Mr Blair's office had read:

"This was not a gaffe. It was a decision to make a strong commitment to renewable that was backed up by other EU nations such as Germany. It gave us a leading position in that area that Tony Blair believed was important for the future and which would help in the long term to protect us against rising energy costs and promote action on the environment."

It noted that *Panorama* had summarised this statement as:

"Tony Blair's office told us it wasn't a gaffe but a decision to protect the environment and help energy security."

The Committee acknowledged that the BBC was under no obligation to include responses to allegations in full, as long as the requirements of the Editorial Guidelines were met. The Committee noted, however, that the full statement from Mr Blair's office was three sentences long and could have been included in full.

In considering the programme's summary of the response, the Committee noted that another contributor, the former Chief Scientist Sir David King, had explained that Mr Blair's decision was made at a meeting of the Heads of State of the European Union and had said that Mr Blair was a very keen advocate for action on climate change. On this basis, the Committee did not consider that it was necessary for the programme's summary of Mr Blair's response to mention that his decision was backed up by other EU nations.

The Committee agreed that the programme did make clear that Mr Blair rejected the allegation that his decision was a gaffe, and it made clear that his decision was motivated by environmental concerns. The Committee then discussed whether the programme was precise in using the phrase "energy security" to refer to long term protection against rising energy costs. The Committee agreed that this was not the fullest possible representation of the response from Mr Blair's office, but it considered that the audience had been given the context elsewhere in the programme for understanding the link between "energy security" and rising energy costs. The Committee noted, for example, the presenter's reference to the commitment to "a massive switchover to home-grown, low carbon energy, more protected from global fuel price swings".

The Committee reiterated its view that the response from Mr Blair's office could have been more fully represented in the programme. However, it considered that the programme had contained the main elements of the written statement from Mr Blair's office and was therefore duly accurate.

The Committee agreed that, in putting the allegation to Mr Blair's office, and in including a summary of the response, the programme had considered all the relevant facts and information and had fulfilled the requirements of the guidelines on Accuracy.

Impartiality

The Committee was mindful that it had found no breach of the guidelines on Accuracy and agreed that a case had not been made for a breach of the guidelines with regard to due Impartiality.

Finding: Not upheld.

Top Gear, BBC One, 5 February 2012, 8pm

1. The programme

Top Gear is a popular motoring magazine show which regularly attracts an audience of around 5 million viewers on BBC Two. Regular slots include reviews of cars in a humorous manner with banter between the presenters. This edition started at 8pm and included a review of the Prius campervan.

2. The complaint

Stage 1

The complainant wrote initially to BBC Audience Services stating that Jeremy Clarkson had made offensive remarks about people with "growths on their faces", using them to describe the shape of a new car. The complainant said that Mr Clarkson had emphasised his remarks with gestures to his face describing large growths with his hands. All the presenters had joined in with the joke. Mr Clarkson also referred to the car as the "elephant car" and the complainant alleged that Mr Clarkson pretended to slur his speech, making fun of people with facial disfigurements. Referring to the large number of people in the UK who have disfigurements, the complainant said that the remarks and gestures were offensive, prejudicial and unacceptable. He requested that Mr Clarkson make a public apology.

The Complaints Adviser, Drama & Entertainment, explained that he had discussed the matter with the Executive Producer of *Top Gear*. He said that, while the presenters did reference facial disfigurement when reviewing the Prius campervan, the BBC hoped that it would be clear from the absurdity of the context that no offence was intended. The tables were turned on Mr Clarkson following his initial comments making him the butt of the joke and, for the most part, the comparison being drawn was between the campervan and the "Elephant Man", which was meant as a reference to a famous cinematic character rather than to any wider group of people. The Executive Producer believed that the audience would recognise that at all times the joke was firmly on Mr Clarkson or, to a much greater extent, the campervan itself. However, the BBC was genuinely sorry if the item had caused any upset.

The complainant wrote separately to the Director-General. Referring to the response from Audience Services, the Director-General's Correspondence Advisor said in response that the Executive Producer was very much aware of the concerns which had been expressed and would bear these in mind in the future.

The complainant wrote again restating his view that the comments were offensive and had the effect of hurting people. He pointed out that the Elephant Man was a real man who suffered horrendously from Victorian stigma. He also said that the *Top Gear* team should publicly decide to find out more about people with facial disfigurements by meeting with Changing Faces, a national charity which supported such people. He said this would set an example to other presenters and programme-makers.

The Director-General replied saying that he had asked the Executive Producer to once again look at the concerns expressed by the complainant. The Executive Producer said that he did not think it was proportionate or appropriate, in the context of a BBC apology, for the *Top Gear* presenters to publicly decide to get involved with Changing Faces. He explained that the presenters' comments had gone through the proper compliance process beforehand, so if they were found to have overstepped the mark, the compliance system and editorial team were as much to blame as the presenters and arguably more so.

The Executive Producer also said that banter such as was broadcast on *Top Gear* would always be an imperfect science; it would invariably upset some viewers at some point. The Executive Producer added that, if all broadcasters were expected to respond to complaints in the way the complainant had suggested, humour or banter would inevitably become strangled. The Executive Producer repeated that the BBC was sorry if it had caused offence.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit (ECU). He said he strongly believed that the presenters' comments, which the Executive Producer had acknowledged were scripted rather than ad lib, breached BBC Editorial Guidelines. He referred, in particular, to the section on Portrayal which said that content should not perpetuate prejudice and that the BBC should avoid careless or offensive stereotypical assumptions. The complainant suggested that the Guidelines should be updated to include reference to disfigurements.

The Editorial Complaints Unit replied and stated that, although Mr Clarkson's opening remarks might have led viewers to suppose that he was referring to disfigurement in general, it was a fair reflection of the exchange as a whole to say that the main reference in this particular instance was to John Hurt's portrayal of Joseph Merrick in *The Elephant Man*. The target of the humour was primarily the design of the car itself and secondarily Mr Clarkson's own looks, not disfigurement. Taking into account also the well-established expectation that exchanges between the presenters would be characterised by a flouting of political correctness and a degree of hyperbole bordering on self-parody, the exchange fell within the Editorial Guidelines. While the exchange had the potential to generate offence, it was contextually justified. The Head of Editorial Complaints therefore did not believe that the programme breached the Guidelines.

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

The complainant contacted the BBC Trust to appeal the Stage 2 decision.

The complainant said that his case for reconsideration was based on the following points:

- While most of the banter may have been primarily directed at Mr Clarkson or poking fun at Joseph Merrick, the last phrase was of a different type. This likened meeting the car to meeting someone with a facial disfigurement and suggested that you would not be able or want to talk to them without looking away. This reinforced a persistent and nasty stereotype.
- The ECU had failed to look at the part of the Guidelines which said that the BBC must be aware that audiences may find casual or purposeless stereotypes offensive. The entire exchange did most definitely cause offence and distress. In the complainant's view, the programme-makers and the BBC's editorial process had been negligent and had failed to be "aware", as the Guidelines require.
- The BBC should accept that programme-makers and editors needed more guidance about what might cause offence to people with facial disfigurements and the Editorial Guidelines should be updated.

3. Applicable Editorial Guidelines

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

Section 5 – Harm and Offence

Introduction

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

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

Portrayal

5.4.38 We aim to reflect fully and fairly all of the United Kingdom's people and cultures in our services. Content may reflect the prejudice and disadvantage which exist in societies worldwide but we should not perpetuate it. In some instances, references to disability, age, sexual orientation, faith, race, etc. may be relevant to portrayal. However, we should avoid careless or offensive stereotypical assumptions and people should only be described in such terms when editorially justified.

5.4.39 When it is within audience expectations, we may feature a portrayal or stereotype that has been exaggerated for comic effect, but we must be aware that audiences may find casual or purposeless stereotypes to be offensive.

4. The Committee's decision

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

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

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. It was noted that the Guidelines on Portrayal, which form part of the Guidelines on Harm and Offence, specifically require taking into account the editorial justification of any remarks whilst avoiding careless or offensive stereotypical assumptions. The Committee also noted that it was required to consider the likely audience expectations for this programme when featuring a portrayal or stereotype that had been exaggerated for comic effect. This issue is covered under Complaint Point 1 below.

The Committee also noted that the complainant had asked it to consider whether the BBC Editorial Guidelines should be updated to include specific consideration for groups of people with various forms of disfigurement. This issue is covered under Complaint Point 2 below.

Complaint Point 1 – The remarks made about facial disfigurement were offensive and distressing.

The Committee noted the dialogue between the presenters about the review of the Prius campervan.

Jeremy Clarkson: Hey, now, you know sometimes you meet somebody who's got a growth on their face and it's actually bigger than their face?

[Richard Hammond gestures towards Jeremy Clarkson as if he were a case in point]

Jeremy Clarkson: No, I mean one of those really ugly things. No, this is just a face. I'm talking about a growth...

Richard Hammond: [Maintaining the gesture] That's your face?

Jeremy Clarkson: I bring this up because there's a company in Japan who's obviously used this growth thing as an inspiration for their new Prius campervan. Here it is.

[Full-screen picture]

Richard Hammond: Oh, God – it's the Elephant Car.

Jeremy Clarkson: It is. 'I'm so pleased to meet you. I hope that nobody knocks my cathedral over' [slurred speech].

Richard Hammond: It's a monster!

Jeremy Clarkson: You've got a double bed in the back and then another one in that growth. That is not a car that you could talk to at a party unless you were looking at something else is it?

The Committee noted the audience research entitled *Disabling Prejudice: Attitudes towards disability and its portrayal on television* (British Broadcasting Corporation, the Broadcasting Standards Commission and the Independent Television Commission: 2003). This report identified elements that contribute to offence. The report concluded that there was a strong indication that offence would be caused if the humour encouraged anti-social behaviour, including physical abuse and mimicry, and/or laughed at disabled people, where the focus of the humour was aimed at the disability. The Committee also noted that the report had identified factors which could dilute the offence, including: familiarity with the "un-PC" style of the presenter; the featured disability not being relevant to the audience; the service on which it is broadcast (there is a perception that BBC Two can broadcast riskier material as viewers felt the channel has a more self-selecting audience); the time of broadcast; and the genre of the programme.

Although the report was published nearly 10 years ago, the Committee noted that the issue of disability has increased its profile over this time in terms of both increased legislation and public awareness. From the survey carried out, the report found that:

"'disability' is currently an extremely sensitive issue. Sixty-five percent of respondents said they would find a tasteless joke on television about disability either very or quite offensive. Such jokes would cause more offence than jokes about black people, Muslims or homosexuals."

The Committee noted that 137 complaints were received about this programme. It also noted that the organisation *Changing Faces*, which is a charity for people and families whose lives are affected by conditions, marks or scars that alter their appearance, had drawn attention to this programme and asked their supporters to contact the BBC.

The Committee took into account that this material was not ad libbed by the presenters but had been pre-scripted and that the Executive Producer had explained that, if the segment was found to have overstepped the mark, the compliance system and editorial team were as much to blame as the presenters and arguably more so.

The Committee noted that the discussion between the presenters had drawn an analogy between the character played by John Hurt in *The Elephant Man* and the design of the Prius campervan. The Committee agreed that the audience would have understood this connection and that the joke at this point was about the motor vehicle's design. The Committee agreed that the slurred speech used by Jeremy Clarkson was also part of this reference to *The Elephant Man*, but the Committee considered that this mimicry was on the margins of acceptability.

The Committee then considered the remark made at the end of the exchange, "That is not a car that you could talk to at a party unless you were looking at something else is it?" and agreed that this remark played on a stereotypically negative reaction to facial disfigurement. The Committee agreed that this comment was not specifically referring to the character Joseph Merrick. Taken together with the references at the beginning of the exchange, when Jeremy Clarkson referred to facial growths as "really ugly things" and said "I'm talking about a growth", the Committee considered that this remark had a broader meaning than solely referring to the film character.

The Committee took into account that the audience of *Top Gear* expects and enjoys the banter and irreverent style of humour which plays on the sometimes controversial and forthright views of its presenters. The Committee also took into account that this was broadcast on BBC Two at 8pm. While most of the comments made about the campervan would have not exceeded the expectations of the audience, the Committee felt that the remark about talking to "a car" at a party and not being able to look at a person with a facial disfigurement strayed into an offensive stereotypical assumption not confined to *The Elephant Man*. As such, the remark was not editorially justified in this context. The Committee accepted that the remark was exaggerated for comic effect, but believed that some viewers may find this particular remark, taken within the whole context of the exchange, to be a purposeless stereotype.

The Committee concluded that this programme was in breach of the Guidelines on Harm and Offence as the exchanges about facial disfigurement were not editorially justified and did not meet generally accepted standards in the context of their portrayal of a disability.

The Committee made clear that it is not suggesting that disability should be off limits for humour. But this is an area where producers should bear in mind that research has shown that public sensitivities are high and therefore care has to be taken. Judgements in this area are very fine. The Committee acknowledged that in this case the wording had been pre-scripted and the editorial team had exercised forethought. However, the decision had been on the wrong side of the line.

Complaint Point 2 – The BBC Editorial Guidelines should be updated to include specific consideration for under-represented groups of people in British society, including those with facial disfigurements.

The Committee noted that the complainant felt that the Guidelines do not adequately take into account under-represented groups of people in British society, including those who have physical disfigurements.

The Committee noted that the Editorial Guidelines were last revised in October 2010. The Introduction to Harm and Offence lists examples of challenging material which includes "discriminatory treatment or language". The Guideline at 5.4.38 on Portrayal also sets out

examples of harm and/or offence which could be caused due to references to minorities and vulnerable social groups. Examples of these groups are given on the grounds of “disability, age, sexual orientation, faith, race, etc”.

The Committee noted that no specific category is singled out under any of the minority or vulnerable social groups. Disability is specifically referred to in the Editorial Guidelines.

The Committee noted the complainant’s view that there are:

“...many smaller minority groups whose lives may be freely ridiculed because BBC producers and directors do not think the Guidelines relate to them: people who stammer, are homeless, have cleft lips, have Tourette’s syndrome, are small of stature...”

The Committee noted that the BBC’s responses to the complaint had not sought to argue that the Guidelines on Harm and Offence, specifically those dealing with Portrayal, do not apply to people with facial disfigurements. Rather, the BBC had argued, contrary to the Committee’s ultimate view, that the potential offence in this case was editorially justified by the context.

Noting that it had applied the existing Editorial Guidelines in upholding this complaint, the Committee did not consider that it was necessary to change the Guidelines in the way that the complainant had suggested. The Committee agreed that, notwithstanding this regrettable lapse of editorial judgement, the Guidelines and corresponding Guidance together give sufficient and appropriate guidance to programme-makers on the issue of the portrayal of minorities and vulnerable social groups. The Committee was also mindful that its own finding on this complaint would stand as a reminder to programme-makers of the need to be aware that audiences may find casual or purposeless stereotypes to be offensive.

Finding: Upheld

Complaint handling

1. The background

In his appeal to the Trust regarding the substance of his complaint (alleged bias in *Sportscene: Falkirk v Celtic*) the complainant said that the length of time taken for the BBC to respond to his complaint at Stage 2 of the complaints process was unacceptable.

In considering the complainant's request for an appeal, the Trust Unit decided that the substance of the complaint did not qualify for consideration on appeal and this decision was endorsed by the Trust's Editorial Standards Committee on 5 July 2012. The Committee's decision has been published here:

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

The Trust Unit also decided that the handling of the complaint at Stage 2 was a matter which should proceed to the Editorial Standards Committee for consideration.

2. The complaint

Stage 1

Between 30 January 2012 and 22 February 2012, correspondence took place between the complainant and BBC Audience Services. The complainant stated that he felt the Falkirk v Celtic game shown on *Sportscene*, BBC Scotland on 29 January 2012 was biased in its coverage of the pre-match line up.

BBC Audience Services responded with a reply from the Sports Editor, who noted that it is the job of the match director to judge what is the best and most appropriate shot in front of him on the desk at any given moment. The Sports Editor said that he did not believe that this had anything to do with bias against Falkirk.

The complainant wrote to BBC Audience Services to express his dissatisfaction with their response. BBC Audience Services responded by acknowledging the complainant's dissatisfaction and advised him of his right to escalate his complaint to the BBC's Editorial Complaints Unit (ECU).

Stage 2

On 23 February 2012 the complainant wrote to the ECU. He reiterated his complaint about bias in the coverage of the opening line up and noted his dissatisfaction with the response that he had received from the Sports Editor at Stage 1.

The Editorial Complaints Unit acknowledged the complainant's letter on 6 March 2012, saying that the complainant had been misadvised to contact the ECU. The ECU explained that responsibility for the manner in which programmes are presented lies with the editors concerned, and the evaluation of their judgement does not fall within the ECU's remit. The ECU said that it had passed the complainant's email to the Head of Public Policy & Corporate Affairs, BBC Scotland for a further response.

On 9 May 2012 BBC Audience Services sent the complainant a response from the Head of Public Policy & Corporate Affairs, BBC Scotland. The Head of Public Policy & Corporate Affairs, BBC Scotland noted the complainant's dissatisfaction with the responses he had received at Stage 1 and went on to outline the reasons that he did not agree with the

complainant's view of bias in the coverage. The complaint was not upheld at Stage 2 and the complainant was advised that he could now escalate his complaint to the BBC Trust if he wished to do so.

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

On 14 May 2012 the complainant wrote to the BBC Trust and asked it to investigate his complaint. In addition to the substance of the complaint (which the Committee considered at its meeting on 5 July 2012), the complainant also raised the matter of the time taken by the BBC to reply to him.

3. Applicable Editorial Guidelines

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

Feedback and Complaints

Audiences are at the heart of everything the BBC does. ... Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect.

The BBC Trust has created a complaints framework, which lays out practices for complaints handling:

...

- Complaints should be responded to in a timely manner...

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.

This appeal raised issues requiring consideration of the Editorial Guidelines on Accountability.

The Committee noted that at its meeting on 5 July it had agreed with the decision of the Head of Editorial Standards not to proceed with the substance of the appeal regarding bias.

The Committee noted that the Editorial Guidelines relating to Accountability state:

"Audiences are at the heart of everything the BBC does. ... Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect."

"The BBC Trust has created a complaints framework, which lays out practices for complaints handling:

- ...
- Complaints should be responded to in a timely manner”.

The Committee was aware that the complaint was not handled at Stage 2 by the Editorial Complaints Unit but had been passed to the relevant division, BBC Scotland. The Editorial Complaints Procedure which was in effect at the time of the complaint did not set out a timeframe for Stage 2 responses to editorial complaints from BBC divisions.

The Committee noted that the Head of Public Policy and Corporate Affairs, BBC Scotland, responded to the points of alleged bias raised by the complainant in a letter from BBC Audience Services dated 9 May 2012. This was 51 working days after the date of the complainant’s Stage 2 complaint letter and 43 working days after the response from the ECU. The Committee noted that this letter did not contain an apology or explanation for the delayed response.

The Committee noted that as part of the Trust’s investigation into the delay in responding to the complainant, The Head of Public Policy and Corporate Affairs, BBC Scotland, explained that volume of work at financial year-end, together with a computer upgrade, impacted his ability to respond to the complainant in a timely fashion.

The Committee welcomed the apology that the Head of Public Policy and Corporate Affairs had offered during the Trust’s investigation:

“In the final response to the complaint ... (which I sent to Audience Services on 7 May) there should of course have been included a line of apology for the time it had taken to offer a full response to him. That there was no such line was an oversight on my part, with my focus on the substantial point which he was making, and for which I am happy to note my full apology.”

The Committee noted that this apology had since been passed on to the complainant. The Committee wished to add its apologies for the delays that the complainant experienced and the lack of an apology or explanation at the time.

The Committee was mindful that the Editorial Complaints and Appeals Procedures have subsequently been updated but those in effect at the time did not include an explicit timeframe for responses at Stage 2 from BBC divisions to editorial complaints. The Committee was nevertheless aware that the timeframe for a substantive Stage 2 response from the Editorial Complaints Unit was set at 20 working days for non-complex cases. Using this as a guideline the Committee agreed that the 51 working days it took for the complainant to receive the Stage 2 response in this case was well outside the time that it would have expected.

The Committee agreed that, given the delay, the lack of an explanation or an apology in the Stage 2 response constituted a breach of the Guidelines on Accountability which state that complaints should be responded to quickly, courteously and with respect.

Finding: Upheld.