

# Editorial Standards Findings

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

June 2012 issued July 2012

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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](http://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 procedure<sup>1</sup> explains that:

**5.10 The Trust will only consider an appeal if it raises "a matter of substance".<sup>2</sup>** 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.<sup>3</sup> 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.

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<sup>1</sup>

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf)

<sup>2</sup> 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.

<sup>3</sup> 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](http://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

***The Rise and Lies of Tommy Sheridan, 23 December 2010, and Reporting Scotland, 26 January 2011***

***This appeal was considered at the May 2012 meeting of the Editorial Standards Committee.***

The complainant originally alleged that two BBC Scotland programmes, *The Rise and Lies of Tommy Sheridan*, and *Reporting Scotland* breached the BBC's Editorial Guidelines on Accuracy, Impartiality, and Privacy and Fairness. The complainant also questioned the legality of the way police interview footage had been obtained. At its meeting of 1 December 2011, the Committee had decided not to consider the part of the appeal relating to the legality of the way in which the police interview footage was obtained, on the basis that it was being investigated by the Procurator Fiscal. The Committee had also noted that it does not hear third party complaints relating to privacy and fairness and, as the complainant was not acting as an agent for Mr and Mrs Sheridan, this part of the appeal would not form part of its consideration. Therefore the remaining issues before the Committee related only to Accuracy and Impartiality.

The Committee concluded:

## *The Rise and Lies of Tommy Sheridan*

- that the use of footage of Mrs Sheridan's police interview was duly accurate and did not mislead the audience.
- that the programme makers had exercised due accuracy in relation to the disguising of the identity of the police officer and the witness.
- that there were editorial reasons for showing the footage of the police interviews and its use had not breached the Impartiality Guidelines.

## *Reporting Scotland*

- that the reversal of, and inclusion of, footage of two extracts from a police interview with Mr Sheridan was not misleading and not a breach of the Accuracy Guidelines.
- that the programme was duly impartial as a whole and that there was no evidence to support the view that the programme-maker was biased.
- that it was inescapable that Mr Sheridan had been convicted of perjury, and the tone and language of the presenter simply conveyed this fact, rather than presenting any personal prejudices.
- that the programme was not in breach of the Impartiality Guidelines.

## Supplementary points

- that, on the basis of the conclusions it had reached in relation to these two programmes, and only considering the allegation within the context of these two programmes, there was no evidence before the Committee that there was any substance to the complainant's allegations regarding the integrity of BBC journalists more generally.

- that points on which the complainant had alleged the Editorial Complaints Unit's response was wholly inadequate had now been considered in substance by the Committee, and none of these items breached the Editorial Guidelines.

The complaint was not upheld.

For the finding in full see pages 7 to 26.

### ***BBC News At Six and BBC News At Ten, 9 December 2011***

The complaint was about a report by the BBC's Economics Editor which was broadcast on the *News at Six* and *News at Ten* on 9 December 2011. The complainant said that the report was inaccurate and biased in stating that financial services in the City of London are "an industry that accounts for a tiny fraction of our economy". The complainant said that the alleged error should have been corrected on-air.

The Committee concluded:

- that, given the City of London generates around 4-5 per cent of UK GDP, the figure is not large, but it is not "tiny", and this word had not been duly accurate.
- that a contribution to the report from the Chief Executive of a City firm had not mitigated the factual inaccuracy.
- that it was regrettable that the inaccuracy had not been picked up early on, when the report could have been re-edited for later bulletins; however, an on-air apology and correction would not be proportionate.
- that the Economics Editor had asked a legitimate question, albeit that she had used the wrong word, and there was no evidence to support the allegation that the role of the City had been deliberately downplayed in the report.

The complaint was upheld in part with regard to accuracy. It was not upheld with regard to impartiality.

For the finding in full see pages 27 to 32.

### ***Newsnight, BBC Two, 13 September 2011***

The complaint concerned a *Newsnight* interview with Professor Richard Dawkins about his new book, *The Magic of Reality: How We Know What's Really True*. The complainant said that the item, which included a studio introduction, a filmed insert and an interview, was biased against religious belief. The complainant also alleged that the presenter, Jeremy Paxman, had caused deliberate offence to those with religious beliefs by using the terms "myth", "hogwash" and "stupid people".

The Committee concluded:

- that that the *Newsnight* item was signposted as a discussion of the merits of religious myths versus science and that it had a legitimate and clear editorial purpose.

- that, while the BBC had accepted that Jeremy Paxman did not challenge Professor Richard Dawkins when he expressed his widely known view that religious beliefs are false while scientific conclusions are true, creationism is an argument of faith.
- that, in line with a previous Editorial Standards Committee finding, the guidelines on impartiality do not encompass the presentation of an argument of faith in science, news and factual programmes when addressing evolution, unless the programmes are directly addressing religion and belief.
- that the *Newsnight* item had not dealt with a controversial subject as defined by the BBC Editorial Guidelines and that it had achieved due impartiality in a way that was adequate and appropriate to the output given the subject and nature of the content, the likely audience expectation and the clear signposting that would have influenced that expectation.
- that there was a clear editorial purpose for the use of the term “myth” in the context of an item about a book teaching children how to replace myth with science.
- that some *Newsnight* viewers were unlikely to have expected Jeremy Paxman’s typically robust and confrontational interviewing style to extend to the use of the terms “religious hogwash” when introducing the story of Genesis, and “stupid people” when talking about those with a literal belief in the Old Testament in the context of the item about religious myths.
- that, although Mr Paxman’s use of the terms “religious hogwash” and “stupid people” was not intended to cause deliberate offence, particularly to those with religious views and beliefs, the use of the terms was offensive to some of the audience and there was no clear editorial purpose for their use in the context of this *Newsnight* item.

The complaint was not upheld with regard to impartiality and was upheld in part with regard to offence.

For the finding in full see pages 33 to 40.

### **Application of Expedited Procedure at Stage 3**

The complainant appealed to the Editorial Standards Committee against the decision of the Trust’s Head of Editorial Standards to apply the expedited complaints handling procedure to future appeals to the Trust from the complainant.

The Committee concluded:

- that two specific cases of complaints to the Trust which had been partially upheld did not undermine the overall picture of a “history of persistently and/or repeatedly making complaints” which either had no reasonable prospect of success and/or were persistently and repeatedly appealed unsuccessfully to the Trust.
- that the “matter of substance” test is not about the seriousness of the allegation but whether the appeal has a reasonable prospect of success.
- that the expedited procedure was being applied only to the appeal stage of the complaints procedure and that an endorsement of an ECU decision or a finding

that a complaint has already been resolved still means that the appeal has been “unsuccessful” for the purposes of the expedited procedure, in that the appeal has not been upheld.

- that the expedited complaints handling procedure should be applied to the complainant at Stage 3 for a period of two years from the date of the Head of Editorial Standards’ letter to him (i.e. until 25 April 2014).

The appeal was not upheld.

For the finding in full see pages 41 to 44.



# Appeal Findings

## ***The Rise and Lies of Tommy Sheridan, 23 December 2010, and Reporting Scotland, 26 January 2011***

### **1. Background**

#### *The Rise and Lies of Tommy Sheridan: 23 December 2010*

*The Rise and Lies of Tommy Sheridan* was a one-off hour-long programme which followed the events leading up to Mr Sheridan's conviction for perjury. The programme chronicled his rise in Scottish politics; the allegations made against him by the News of the World relating to adultery and visits to a sex club and sex parties; his subsequent successful libel action; and his eventual prosecution for perjury. It concluded with the trial verdict and was broadcast on the day he was found guilty but before he was sentenced.

The programme featured police interview footage of Mr Sheridan being asked about an alleged group sex incident that had occurred before the alleged incidents which were the subject of the News of the World allegations that were said to have taken place. It also featured two sections of footage from the police interview with Mrs Sheridan: one of which focused on a particular line of questioning pursued by the police, in which the policeman alleged that she was trained in terrorist techniques; the other related to an alibi that Mrs Sheridan had given in the libel case for the night that it was alleged that her husband was at a sex party at the Moat House Hotel in Glasgow. The image of the policeman in each extract had been pixelated to prevent identification. The police footage had also been deemed inadmissible as evidence in Court as part of the perjury proceedings, on the basis that neither Mr nor Mrs Sheridan had had access to legal advice during this police questioning.

#### *Reporting Scotland: 26 January 2011*

*Reporting Scotland* is BBC Scotland's local news programme which, on 26 January 2011, included a report of about eight minutes long about Mr Sheridan's conviction for perjury. This was broadcast on the day he was sentenced to three years in prison. The report featured an interview with Ms Rosie Kane, a former colleague of Mr Sheridan in the Scottish Socialist Party (SSP). Footage of Mr Sheridan being charged by the police was then included with a voiceover stating "We'd like to have put those points to Sheridan but he refused to speak to the BBC before sentencing, after we revealed his admission to police that he'd previously had group sex." The footage of Mr Sheridan's admission was then shown.

The programme also included several references to Mr Sheridan's lack of apology for perjury.

### **2. The complaint**

#### **Stage 1**

The complainant wrote to BBC Audience Services on 26 January 2011, raising an issue about the legitimacy of the inclusion of police interview footage within the two programmes. He also complained that the *Reporting Scotland* story lacked impartiality in its inclusion of an extract from the police footage and in its references to the lack of remorse shown by Mr Sheridan when he was sentenced.

BBC Audience Services replied to the complainant on 15 March 2011. The response explained that the broadcast of the police footage adhered to the BBC's Editorial Guidelines and that no criminal offences were committed to obtain the footage. Furthermore, there was a strong journalistic imperative to show the video footage as it gave an insight into the nature of the case against both Mr and Mrs Sheridan. The complaint about lack of impartiality was rejected on the basis that there was no evidence of bias.

## **Stage 2**

The complainant escalated his complaint to the next stage of the complaints process on 21 March 2011. He did not accept the arguments put forward by the BBC in response to his complaint about inclusion of the footage. The complainant also provided further arguments with regards to his complaint about a lack of impartiality in the *Reporting Scotland* story.

A Complaints Director from the Editorial Complaints Unit (ECU) responded to the complainant by letter dated 7 April 2011, summarising that the complaint as it had been presented raised issues of privacy, fairness and impartiality. The complainant responded on 11 April 2011 confirming that his complaint also concerned accuracy and the legality of the way in which the footage was obtained. The complainant set out the Stage 2 complaint in full in a letter dated 24 April 2011 (supplemented by letter dated 25 April 2011).

An ECU Complaints Director provided the Stage 2 response by letter dated 12 May 2011, which did not uphold the complaint.

## **Stage 3 – Appeal to the BBC Trust**

The complainant appealed to the BBC Trust by letter dated 21 June 2011. The key points of that appeal, including points of clarification from later correspondence, are as follows:

### *The Rise and Lies of Tommy Sheridan*

Accuracy:

- There was no justification for including the police interview footage (of either Tommy or Gail Sheridan) and its use amounted to a breach of the Accuracy Editorial Guidelines.
- The BBC knowingly and materially misled its audience by using footage that had been deemed inadmissible as evidence in the perjury proceedings.
- By disguising the identity of the police officer conducting the interviews, and the person from whose witness statement he read an extract, allegations that could not be corroborated were unattributed. The complainant considered that this was a reversal of BBC Guidelines, by concealing the identity of the person making the unsubstantiated allegations, while identifying the victim, particularly when other broadcasters had revealed the police officer's identity when reporting the court proceedings. He also considered that this would reinforce the audience's belief that there was substance to the allegations of terrorism put forward by the policeman because the audience would think blanking out the police officer's face was necessary to protect the police officer.
- As a consequence of the context in which the footage was used (e.g. how it was introduced), and without adequate explanation or opportunity for a rebuttal, the programme gave the impression that Mrs Sheridan had been trained in terrorist techniques. In this way, the programme makers had knowingly and materially

misled their audience. The complainant considered that viewers would be entitled to assume that the BBC would not have broadcast the police allegations unless they had some substance and it was therefore inaccurate to broadcast unfounded allegations. Furthermore, the way that the BBC had portrayed Mrs Sheridan's decision to exercise her right to silence implied that she was guilty.

- As a consequence of the context in which the footage was used (e.g. how it was introduced, the commentary that accompanied it), and without the opportunity for a rebuttal, the programme gave the impression that Mrs Sheridan had lied on oath in respect of the alibi she had provided for her husband. In this way, the programme makers knowingly and materially misled their audience. Again, the complainant considered that viewers would be entitled to assume that the BBC would not have broadcast the police allegations unless they had some substance and it was therefore inaccurate to broadcast unfounded allegations. Furthermore, the way that the BBC had portrayed Mrs Sheridan's decision to exercise her right to silence implied that she was guilty.

#### Impartiality:

- There was no justification for including the police interview footage (of either Tommy or Gail Sheridan) as its use amounted to a breach of the Impartiality Editorial Guidelines, especially as the footage had been deemed inadmissible as evidence in Court, the Crown had not given permission for its use and it was not placed in a proper context.
- The programme addressed a matter of political controversy, and the programme breached the Guidelines on controversial subjects because the personal prejudices of the presenter were clear to the audience.

#### Reporting Scotland

#### Accuracy:

- The complainant raised several issues with the way in which the footage of Mr Sheridan being charged was placed directly before the footage of him admitting to having previously had group sex. The complainant said that the admission related to a period of time ten years before any of the events forming the basis of the charges for which Mr Sheridan had been sentenced and that there was a real risk that the audience would view the admission as an admission made in direct response to the charges for perjury. The complainant made the point that once a suspect has been charged any responses given by a suspect are admissible as evidence in Court and, for that reason, it was misleading to place the footage of Mr Sheridan being charged before the admission of group sex, as it gave that admission a greater significance.

#### Impartiality:

- The programme lacked impartiality in that it repeatedly stated that Tommy Sheridan had made no apology and shown no remorse, particularly in circumstances where the programme team were aware that Mr Sheridan intended to appeal his conviction and was maintaining his claim of innocence.
- The programme lacked impartiality in that it included footage which was prejudicial to Mr Sheridan and to which he had "specifically objected" and because there was no editorial justification for showing it: Mr Sheridan being asked about an alleged group sex incident that had occurred before the alleged incidents which

were the subject of the News of the World allegations were said to have taken place. The complainant disagreed with the reasons given by the BBC for their justification of including the footage.

- The personal prejudices of the reporter (Raymond Buchanan) were also evident because the footage was only included because Mr Sheridan refused an interview with the BBC, and this would have had a significant and adverse impact on audience perception.
- The programme lacked impartiality in that it chose to “shift the perspective of the report from the individual consequences of sentencing for Mr Sheridan to the wider political fall-out from his conviction and the events that led to it” and failed to include competing political viewpoints (i.e. because more weight was given to the views of Rosie Kane and the SSP, rather than those of Mr Sheridan and the Solidarity Party). This also amounted to evidence of the personal prejudice of the reporter who had been refused an interview with Mr Sheridan.

He also stated that the response of the ECU was wholly inadequate in respect of several issues relevant to this appeal:

- In relation to the ECU finding on accuracy on *The Rise and Lies of Tommy Sheridan*, the programme failed to put the extracts from the police footage in context thereby creating a misleading impression.
- In relation to the *Reporting Scotland* report, the police interview footage was deliberately falsified to make it appear that Tommy Sheridan had made an admission of the charges against him in the presence of his solicitor. Two pieces of footage were shown in reverse order (when they had been filmed three hours apart) – this was a deliberate and premeditated attempt to distort the known facts and mislead the BBC audience.
- Also in relation to the *Reporting Scotland* programme, the programme was incorrect when it stated that Tommy Sheridan had refused an interview in relation to the points made by one of the contributors, as Mr Sheridan had refused an interview before the contributor in question was interviewed. The context was created to justify the reporting of Mr Sheridan’s refusal of an interview, and “thereby to pay Mr Sheridan back for the refusal, and for his complaint about the use of the unlawful police footage by using it as a pretext for showing a fragment of that very footage again”.

There was then further correspondence on procedural matters between the complainant and the Trust Unit.

On 9 November 2011, the Head of Editorial Standards wrote to the complainant explaining that she had considered the Appeal under the Complaints Framework and, having read the relevant correspondence and watched the programmes in question, did not consider that the appeal had a reasonable prospect of success. The complainant requested a review of that decision by letter dated 23 November 2011, and accordingly on 1 December 2011, the ESC considered the complainant’s request. The ESC considered that the appeal did raise matters of substance requiring more detailed consideration and overturned the Head of Editorial Standards’ decision, determining that it would adjudicate on this appeal.

### **3. Applicable Editorial Guidelines**

The following Editorial Guidelines were considered most relevant in relation to this complaint:

## **Section 1 – BBC Editorial Values**

### **1.2.2 Truth and Accuracy**

We seek to establish the truth of what has happened and are committed to achieving due accuracy in all our output. Accuracy is not simply a matter of getting facts right; when necessary, we will weigh relevant facts and information to get at the truth. Our output, as appropriate to its subject and nature, will be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We will strive to be honest and open about what we don't know and avoid unfounded speculation.

### **1.2.3 Impartiality**

Impartiality lies at the core of the BBC's commitment to its audiences. We will apply due impartiality to all our subject matter and will reflect a breadth and diversity of opinion across our output as a whole, over an appropriate period, so that no significant strand of thought is knowingly unreflected or under-represented. We will be fair and open-minded when examining evidence and weighing material facts.

## **Section 3 – Accuracy**

### **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.

### **3.3.1**

Any proposal to rely on a single unnamed source making a serious allegation or to grant anonymity to a significant contributor must be referred to Director Editorial Policy and Standards and Programme Legal Advice.

### **3.4.13**

When quoting an anonymous source, especially a source making serious allegations, we must take all appropriate steps to protect their identity. However, we should give the audience what information we can about them and in a way that does not materially mislead about the source's status.

(See Section 6 Fairness, Contributors and Consent: 6.4.10 - 6.4.12)

Whenever a story originated by the BBC involves an anonymous source, the relevant editor has the right to be told their identity. In cases involving serious allegations we should resist any attempt by an anonymous source to prevent their identity being

revealed to a senior BBC editor. If this happens, the reporter should make it clear that the information obtained confidentially may not be broadcast.

**Any proposal to rely on a single unnamed source making a serious allegation or to grant anonymity to a significant contributor must be referred to Director Editorial Policy and Standards and Programme Legal Advice.** We will need to consider:

- whether the story is of significant public interest
- whether the source is of proven credibility and reliability and in a position to have sufficient knowledge of the events featured
- any legal issues

(See Section 18 The Law)

- safety concerns, for example for whistleblowers
- whether a response to serious allegations has been sought from the people or organisations concerned

(See Section 6 Fairness, Contributors and Consent: 6.4.25 - 6.4.27)

- sensitive and personal issues
- whether the serious allegation was made or substantiated "off the record".

## **Section 4 – Impartiality**

### **4.1**

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

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

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

Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

The BBC Agreement forbids our output from expressing the opinion of the BBC on current affairs or matters of public policy, other than broadcasting or the provision of online services.

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

### **4.4.2**

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 item. Instead, we should seek to achieve 'due weight'. For example, minority views should not necessarily be given equal weight to the prevailing consensus.

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

#### **4.4.5**

We must apply due impartiality to all our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output, including drama, entertainment and sport.

A 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely.

#### **4.4.6**

In determining whether subjects are controversial, we should take account of:

the level of public and political contention and debate

how topical the subjects are

sensitivity in terms of relevant audiences' beliefs and culture

whether the subjects are matters of intense debate or importance in a particular nation, region or discrete area likely to comprise at least a significant part of the audience

a reasonable view on whether the subjects are serious

the distinction between matters grounded in fact and those which are a matter of opinion.

Advice on whether subjects are 'controversial' is available from Editorial Policy.

#### **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.

(See Section 4 Impartiality: 4.4.2)

#### **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.

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

If such output contains serious allegations, a right of reply may be required, either as part of the same output, or in a connected and clearly signposted alternative.



(See Section 4 Impartiality: 4.4.25 - 4.4.28 and Section 6 Fairness, Contributors and Consent: 6.4.25 - 6.4.28)

#### **4.4.9**

In addition, we must take particular care and achieve due impartiality when a 'controversial subject' may be considered to be a major matter. 'Major matters' are usually matters of public policy or political or industrial controversy that are of national or international importance, or of a similar significance within a smaller coverage area. When dealing with 'major matters', or when the issues involved are highly controversial and/or a decisive moment in the controversy is expected, it will normally be necessary to ensure that an appropriately wide range of significant views are reflected in a clearly linked 'series of programmes', a single programme or sometimes even a single item.

(See Section 4 Impartiality: 4.4.25 - 4.4.28)

#### **4.4.12**

News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument. The approach and tone of news stories must always reflect our editorial values, including our commitment to impartiality.

#### **4.4.13**

Presenters, reporters and correspondents are the public face and voice of the BBC - they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.

(See Section 4 Impartiality: 4.4.29 and Section 15 Conflicts of Interest)

## **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 complainant's correspondence with the BBC Trust, the Editorial Adviser's report, and comments on the report from the complainant. Comments on the report were not received from the BBC Executive.

The Committee first noted certain issues raised on appeal that fell outside the scope of its consideration. It then considered:

- Whether *The Rise and Lies of Tommy Sheridan* had breached the Accuracy and Impartiality Guidelines
- Whether *Reporting Scotland* had breached the Accuracy and Impartiality Guidelines.

Preliminary point – Issues that are out of scope



The Committee noted that part of the appeal related to the legality of the way in which the police interview footage was obtained. The complainant stated that the Lothian and Borders police had investigated this separately and that a report of the investigation had been sent to the Procurator Fiscal. At its meeting of 1 December 2011 the Committee had decided not to consider these aspects of the appeal, in light of Annex A of the Complaints Framework which provides that the Trust is able to stop the complaints handling procedure in relation to complaints that are either being pursued through the courts or being investigated by external authorities. This part of the appeal therefore did not form part of the Committee's consideration.

The Committee also noted that the complainant's appeal raised issues concerning privacy and fairness, but that it does not hear third party complaints relating to these issues and this point had been explained to him. It therefore noted that, as the complainant was not acting as an agent for Mr and Mrs Sheridan, but rather was bringing the complaint in his own right, this part of the appeal therefore would not form part of its consideration.

***The Rise and Lies of Tommy Sheridan, BBC One Scotland, 23 December 2010***

Point 1.1: Accuracy of police interview footage of Mrs Sheridan in which she is accused of being trained in terrorist techniques

As a preliminary point, the Committee considered the complainant's assertions that the BBC had knowingly and materially misled its audience, in breach of the Editorial Guidelines regarding Accuracy, by using footage that had been deemed inadmissible as evidence in Court. The Committee noted the complainant's assertion that the interview footage of Mr and Mrs Sheridan had been deemed inadmissible because they were interviewed without legal representation. The Committee also noted that there was a distinction between what was to be regarded as accurate for the purposes of the Editorial Guidelines, and what was to be regarded by a Court as admissible as evidence in a trial, and the broadcast of footage that is inadmissible in a trial is therefore not necessarily a breach of the Guidelines. In this instance, where the footage was "sound", authentic footage of a police interview, it did not consider that the per se use of the inadmissible footage resulted in a breach of the Accuracy Guidelines.

The Committee then turned to the specific examples within the programme of alleged breaches, as cited by the complainant. First it considered the Editorial Guidelines regarding Accuracy (3.2.1, 3.2.2, and 3.2.3) in relation to the police interview footage where Mrs Sheridan was asked who had trained her in a "recognised PIRA, IRA whatever, form of terrorism technique". It noted that the complainant felt that the programme was inaccurate and misleading in that the police officer's allegation was unfounded and speculative, and might give the impression that Mrs Sheridan had been trained in terrorist techniques. It also noted that the BBC Scotland News and Current Affairs team had stated that the allegations were properly contextualised, as the audience would have been aware that the police offered no evidence in support of the allegations, and that it was clear that the purpose of the footage was to show the way in which the police treated Mrs Sheridan.

The Committee considered this footage firstly in the broader context in which it would have been shown. It noted that the Sheridan trial was widely reported on in the run up to the verdict, particularly in Scotland. It thought that, given the prominence of the media coverage of the trial as a whole, the audience would be likely to be aware already that Mr Sheridan had accused the police of intimidating his wife during questioning. The Committee also considered that, in this broader context, the audience would have been well aware that the allegation of terrorism was not part of the case against Mrs Sheridan, and that Mrs Sheridan had been acquitted of all charges in any event.

It then considered this footage in the context of the programme itself. The Committee noted that the interview was directly preceded by a clip of Mr Sheridan stating that "Despite the fact that it [the perjury trial] was supposed to be an investigation into a trial it's turned into an investigation into me rather than an investigation into a trial." It was also directly preceded by commentary from the presenter, Mark Daly, that "Gail, who is a Catholic, has her rosary beads removed from her during a break from questioning and what comes next is totally unexpected." The Committee therefore considered that it was clear from the context that the footage was illustrative of Mr Sheridan's claim that the police investigation had been directed at him through the questioning of his wife. It noted that the allegations were clearly attributed to a police officer, and that his style of questioning was evident from the footage, even if his face had been blurred. For these reasons, the Committee considered that the footage was used to illustrate the police questioning tactics, which were clearly an attempt to compel Mrs Sheridan to answer their questions, rather than to demonstrate that the police allegations had any substance.

The Committee also noted that it was made clear within the programme that Mrs Sheridan had been cleared of all charges and that the case against her had collapsed:

Lawyer: As Tommy Sheridan's solicitor I have a statement to make on his behalf. "For three years, my wife and I have faced charges of perjury. Today I was convicted and Gail was acquitted of any crime."

and

Commentary: On the day that Sheridan closes his defence, the Crown dramatically announces it's dropping all charges against Gail.

Lawyer: After forty four days of trial, Gail stands clear from any criminal charge. However no further statement can be made at this time, due to on-going proceedings. Thank you.

The introductory commentary to the programme ("using leaked police interview footage seen for the first time we reveal the inside story of the investigation which brought him [Tommy Sheridan] down") only referred to the application of the footage to Mr Sheridan, and did not imply that Mrs Sheridan was guilty of any crime. Likewise, it did not believe that the presenter's commentary "Gail on the other hand exercised her right to silence" would have implied that she was guilty, as the Committee considered that the audience would have been well aware of Mrs Sheridan's prerogative to remain silent under police questioning.

Overall, the Committee concluded that the footage was duly accurate and did not mislead the audience, and for each of the above reasons, the footage did not breach the Accuracy Guidelines.

#### Point 1.2: Accuracy of police footage of Mrs Sheridan in which she is accused of providing her husband with a false alibi

The Committee then went on to consider the complainant's allegations in relation to police interview footage in which Mrs Sheridan is questioned about a witness statement that undermines the alibi that she gave in the libel proceedings in 2006 (an alibi that assisted Mr Sheridan with his case). As a preliminary point, and for the same reasons as above, it did not consider that the use of police interview footage that was deemed inadmissible as evidence in Court, necessarily resulted in a breach of the Accuracy Guidelines, given that the two issues are separate considerations.

The Committee first noted the context in which the footage was shown: the introduction to the police footage stated "Gail Sheridan told the defamation case in 2006 that she was with Tommy that night and he therefore could not have been at the Moat House. But during police questioning it was put to her she had in fact that evening been phoning around trying to track him down." Although the identity of the particular officer was obscured, the allegation was clearly attributed to the police generally as the interviewer was identifiable as a policeman. The context in which the allegation was made was clear to the audience so that it could judge the status of the allegation for itself. After the footage, the presenter then stated: "Police believe Sheridan was at the Moat House that night." The programme also began with an introductory statement that "Using leaked police interview footage seen for the first time, we reveal the inside story of the investigation which brought him [Mr Sheridan] down". The Committee noted the complainant's arguments that the clear implication of the commentary and the context of the footage was that the allegation put to Mrs Sheridan in the footage was true, that this was new, secret footage that the court was not allowed to hear, and that the evidence she previously gave on oath was perjured.

The Committee considered that the audience clearly knew from this context that Mrs Sheridan had been charged with perjury and, for that to have happened, the police must have suspected her of lying on oath. The Committee noted that the police's suspicion that Mrs Sheridan had lied would also have emerged in Court and been widely reported in the media, whether or not it related to the specific witness statement that featured in the interview footage. The Committee therefore decided that it was duly accurate for the presenter to state this, in the context of a programme that depicted the chronological events of the trial, even if the case against Mrs Sheridan subsequently collapsed.

The Committee then considered the complainant's view that the Accuracy Guidelines apply to the content of the police interview footage, and because the police questioning was not based on sound evidence and featured unfounded allegations, it should not have been shown. The Committee noted that the footage directly preceded a commentary that "the case [against Mrs Sheridan] depends on key prosecution witness Matt McColl who is said to have arranged the party, but, under intense cross examination from Gail's QC Paul McBride, his credibility collapses and the Crown drops the Moat House Chapter from the indictment. With almost half the charges now gone, the prosecution case rests with a whimper." It was of the view that both in the context of the media coverage as a whole and within the programme (at the start and again towards the end) it was made clear to the audience that all charges against Mrs Sheridan were ultimately dropped. For these reasons, the Committee was satisfied that the programme makers had exercised due accuracy in their broadcast of the footage.

#### Point 1.3: Accuracy in relation to the disguising of the identity of the police officer and witness

The Committee then went on to consider the complainant's allegations regarding the anonymisation of the police officer and the witness statement that was put to Mrs Sheridan, in both interviews. It noted that the complainant had stated that, by disguising the identity of the police officer conducting Gail Sheridan's interview and the person from whose witness statement he read, allegations which could not be corroborated were unattributed. The complainant also considered that this was a reversal of BBC Guidelines in that the identities of those making allegations were concealed while the victim was identified.

The Committee referred to the Guidelines relating to the anonymisation of sources, and noted Guideline 3.3.1 which states that "Any proposal to rely on a single unnamed source making a serious allegation or to grant anonymity to a significant contributor must be

referred to Director Editorial Policy and Standards and Programme Legal Advice". However, the Committee did not consider that this Guideline was applicable, as it was clear to the audience that the allegation was being made by a police officer, notwithstanding that his individual identity had been blurred. It also noted Guideline 3.2.2 which states that "Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed." For the same reason, the Committee did not consider that this Guideline had been breached, in that it was clear that the allegation was attributed to a police officer.

The Committee also bore in mind the fact that it is normal BBC practice to disguise the identity of a police officer conducting an interview because, for example, that officer may be involved in a covert or undercover operation that could be compromised by revealing his identity. The Committee noted that the programme makers clearly saw no reason to deviate from standard practice in this instance, particularly as that police officer was not the subject of the programme and his individual identity was irrelevant. For those reasons, the Committee also considered that it was irrelevant that other broadcasters had revealed his identity in their coverage of that police officer's evidence in the trial.

The Committee noted the complainant's allegation that anonymisation would reinforce the audience's belief that there was substance to the allegations put forward by the policeman (for example, because blanking out the police officer's face was necessary to protect him). It also noted its conclusions above that the audience would not have considered that the allegations put forward by the policeman were substantiated, given the overall context of the programme. Also, taking into account the fact that it is standard practice to obscure the identity of police officers, and because the police officer's individual identity was clearly irrelevant, the Committee did not accept that the obscuring of the policeman's identity would have had this effect. The Committee therefore agreed that the fact this allegation was made by a policeman, and the context in which it was made, was clear, so that the audience could judge the status of the allegation and it did not result in a breach of the Guidelines.

The Committee then noted the fact that the name of the witness whose statement was put to Mrs Sheridan was not revealed on the programme. However, it also did not consider that the identity was relevant, or that a failure to disclose the identity of the witness made the programme misleading, as the footage was simply illustrative of the police's suspicion that Mrs Sheridan had lied on oath. The Committee therefore concluded that not revealing the identity of the witness did not result in a breach of the Accuracy Guidelines.

For each of the above reasons, the Committee was satisfied that the programme makers had exercised due accuracy in the use of this footage and therefore determined that there was no breach of the Accuracy Guidelines.

#### Point 1.4: Impartiality in the use of the police interview footage

The Committee then went on to address the complainant's allegations that the programme was in breach of the Impartiality Guidelines, in that the police interview footage had been included in the programme at all. The Committee noted that the complainant had argued that the programme makers failed to be fair and open-minded when deciding to use the police footage and that there was no justification for doing so, as the footage had not been aired in open Court, the Crown had not given permission for its use, and it was not placed in its proper context. The Committee also took into account the programme team's view that the police interview footage was used to illustrate issues pertinent to the trial, issues surrounding the trial and issues that informed the viewer of the background of the trial.

The Committee noted that, as discussed in relation to the Accuracy Guidelines, the use of footage that was deemed inadmissible as evidence in Court did not necessarily mean that broadcasting that footage breached the Impartiality Guidelines. As to the question of whether it should have been used if the Crown had not given permission for its use, the Committee noted that the issue was inextricably connected with the legality of obtaining and using the footage, which it had agreed was being investigated separately and therefore did not form part of its consideration.

The Committee also considered the complainant's allegations that the programme addressed a "controversial subject" for the purposes of the Impartiality Guidelines. The Committee considered in particular Guidelines 4.4.5 to 4.4.8 and noted that it was likely that the trial would have been a matter of political controversy at the time of the trial, for the purposes of Guideline 4.4.5. It also considered that in the lead-up to the verdict there would have been a high level of public debate, particularly in Scotland and that given the extensive media coverage of the trial was to be regarded as "topical". Furthermore, the trial resulted in a high profile politician being convicted for perjury, which was clearly a serious subject of importance. However, the Committee also noted that the verdict had already been delivered and therefore (even taking into account Mr Sheridan's proposed appeal) the conviction was now a matter grounded in fact as opposed to opinion, as was the fact that the judge had told Mr Sheridan he had to expect that he would go to prison when he returned for sentencing. Taking all these points into account, the Committee concluded that Mr Sheridan's guilt or innocence had been controversial but, as there had been a verdict, it was no longer "active" for the purposes of the Guidelines at the time of the broadcast. Notwithstanding this, the exercise of impartiality must still be adequate and appropriate to the output taking into account the subject and nature of the content (a post-trial and pre- sentence background report on a controversial trial), the likely audience expectation for such a report and any signposting that might influence the audience.

The Committee noted that the programme included interviews with Mr Sheridan's former colleagues and those that gave evidence against Mr Sheridan in his trial, but that the programme also included numerous statements and interviews with Mr Sheridan, and statements made on his behalf by his solicitor, as well as an interview with one of the four of his colleagues who supported him in the trial. The Committee also noted that the programme covered an extensive history of his political career, and not just the verdict. It included commentary about when Mr Sheridan "made history" for leading six socialist MSPs into the Scottish Parliament and gave the views of his former colleagues that he was "an inspiring leader, fantastic guy.... We couldn't speak highly enough of him" as well as discussing his successful defamation action. The Committee also agreed that this range of perspectives were clearly identifiable as opinion, given that the comments were attributed to the various interviewees of the programme. Taking all these points into account, the Committee agreed that it was clear from the overall context of the programme that there were different versions of the events. The Committee therefore determined that the programme was duly impartial and that due weight had been given to a wide range of significant views and perspectives. It therefore considered that, even if the wider ramifications of the verdict on Mr Sheridan's career were to be regarded as "controversial" for the purposes of the Guidelines, the Guidelines on controversial subjects had been satisfied.

The Committee then went on to consider both interview extracts individually and also in the context of the programme as a whole. It was of the view that the interview footage where Mrs Sheridan was accused of terrorist techniques had been shown to demonstrate the police tactics used and it considered that the footage might even elicit sympathy for Mrs Sheridan, in its portrayal of aggressive police questioning and because of the removal



of her rosary beads. It noted that the BBC programme team had said that it had decided to include the footage because Mr Sheridan had mentioned in his trial that his wife was subjected to unacceptable treatment by the police and the team believed that this footage was therefore directly relevant to this aspect of his defence. The Committee agreed that there were editorial reasons for showing the footage and considered that there was nothing to suggest the programme makers had not exercised due impartiality by including the footage.

The Committee then turned to the footage where a witness statement was put to Mrs Sheridan that undermined the alibi she gave. The Committee noted that the BBC programme team had stated that the footage was included to illustrate the suspicions of the police regarding Mrs Sheridan's alibi and demonstrated their questioning of her. The Committee noted that it would have been in the public domain that Mrs Sheridan's alibi was being questioned as part of the trial, whether or not it was because of this specific witness statement. The Committee also considered that it was clear from the programme as a whole that the case against Mrs Sheridan had collapsed. It noted that Mr Sheridan's solicitor's statement was included at the start of the programme:

Lawyer: As Tommy Sheridan's solicitor I have a statement to make on his behalf. "For three years, my wife and I have faced charges of perjury. Today I was convicted and Gail was acquitted of any crime."

The Committee also noted this was made clear again towards the end of the programme:

Commentary: On the day that Sheridan closes his defence, the Crown dramatically announces it's dropping all charges against Gail.

Lawyer: After forty four days of trial, Gail stands clear from any criminal charge. However no further statement can be made at this time, due to on-going proceedings. Thank you.

In this context, the Committee agreed that there were editorial reasons for showing the footage and concluded that the use of the footage had not breached the Impartiality Guidelines.

### **Finding: Not Upheld**

### ***Reporting Scotland*, BBC One Scotland, 26 January 2011**

#### Point 2.1: Accuracy of police interview footage of Mr Sheridan

The Committee then went on to consider the *Reporting Scotland* footage of two short extracts of a police interview with Mr Sheridan against the Accuracy Guidelines. It noted that the footage appeared directly after an interview with Rosie Kane, a former colleague of Mr Sheridan, and a voiceover stating "We'd like to have put those points to Sheridan but he refused to speak to the BBC before sentencing, after we revealed his admission to police that he'd previously had group sex." Then footage in which Mr Sheridan was charged was placed directly before footage (occurring several hours earlier) in which he made some apparent admissions about having previously had group sex.

Reporter: As Gail headed home and her husband headed to jail, a former comrade who gave evidence against him told the BBC how she is now too intimidated to live in Glasgow.

Rosie Kane: If Tommy was being sentenced for what he has done to the left in Scotland he would be getting life, that's the amount of damage, that's how bad it is. It's our job now to try to build that trust up and it would be lovely to be able to do that but when people are screaming "lying and scabbing scum" at you then it confuses the public further.

Footage of police interview and voice of officer: I'm about to charge you...

Reporter: We'd like to have put those points to Sheridan but he refused to speak to the BBC before sentencing, after we revealed his admission to police that he'd previously had group sex.

This sequence contained footage of the police interview with the following on-screen caption:

Sheridan: Em, I reckon, up to and when I got out of the prison, there's been times when I've been involved wi' other...more than one participating partners in sex.

As a preliminary point, as before, the Committee did not consider that it was misleading to use footage that had been deemed inadmissible as evidence in Court, on the basis that the Court is applying a different analysis to evidence in Court, than the BBC does in its assessment of the footage against the Guidelines.

In terms of the complainant's allegations that the reversal of the footage was a breach of the Accuracy Guidelines, the Committee noted that the BBC Scotland team had stated that the purpose of the footage of Mr Sheridan being charged was to explain the context of the interview, and to make it clear that he was being questioned by the police; and the footage of the group sex admission was included to illustrate why Mr Sheridan had refused to speak to the BBC before sentencing. It also noted that the complainant had alleged that there would be a risk that the audience would view the admission as an admission made in direct response to the charges, particularly as Mr Sheridan had been jailed that day for lying to the Court about his sex life. In particular he alleged that the audience would be misled because, under Scottish law, when someone is detained and questioned as a suspect, questions by the police can be wide-ranging; but once that individual is charged any response may be used as evidence in court. For that reason, the complainant stated that it was misleading to place the footage of Mr Sheridan being charged before the admissions of group sex, as it meant the admission would appear to bear a greater significance than it did.

The Committee firstly considered the footage in the overall context of the report. It noted that it was reported that Mr Sheridan was defiant and that it was announced through his solicitor that he would challenge his conviction for lying.

Aamer Anwar: "This multi-million pound prosecution will separate me from my wife and child and that will be heart breaking but I will continue to fight the system that protects the real criminals, the rich and the powerful. I have today instructed my solicitor to lodge an appeal against conviction."

The Committee also noted that it was reported that his wife and solicitor remained defiant saying he would appeal his conviction and come back stronger. It considered that it was

clear that Mr Sheridan had pleaded not guilty to the charge and maintained his innocence. For that reason, the Committee did not agree that the audience would have considered that the admission made by Mr Sheridan formed the basis of, or followed on from, the charges he was convicted of. The Committee did not consider that an ordinary viewer would have realised the legal consequences of making an admission under charge, whether or not the viewer was aware that the footage was reversed. It therefore did not believe that the audience would have interpreted the footage in the way alleged by the complainant or would have attributed an unwarranted significance to the footage.

The Committee noted that the programme team had said that it included the footage of Mr Sheridan being charged in order to make it clear to the audience, in the context of a brief news item, that the extract being shown was police interview footage. The Committee agreed that there were editorial reasons for including the footage, as the BBC had stated that the footage of Mr Sheridan being charged was included to put the other footage in the context of a police interview. The Committee also accepted that, by the inclusion of the preceding commentary, it would have been clear to the audience that the footage of the admission was included in order to illustrate Mr Sheridan's reasons for declining an interview. Taking into account the context, and the fact of it being a brief news item, the Committee did not consider that it was necessary to explain the background to those admissions in order to satisfy the requirement of due accuracy in the Guidelines. For all of these reasons, the Committee determined that the reversal of, and inclusion of, the footage was not misleading and not a breach of the Accuracy Guidelines.

#### Points 2.2 and 2.3: Impartiality in the inclusion of the police interview footage

The Committee then turned to the complainant's allegations that the programme, and in particular one of its reporters (Mr Buchanan), was not impartial as his personal prejudices were evident, which would have had a significant and adverse impact on audience perception. The complainant alleged that Mr Buchanan was annoyed by Mr Sheridan's refusal to grant him an interview and as a "slight" the BBC reshown the footage of Mr Sheridan admitting to group sex, notwithstanding that it was not relevant to the conviction.

The Committee also considered the complainant's allegations that the programme addressed a "controversial subject" for the purposes of the Impartiality Guidelines. The Committee considered in particular Guidelines 4.4.5 to 4.4.8 and noted, as above, that it was likely that the trial would have been a matter of political controversy at the time of the trial, for the purposes of Guideline 4.4.5. It also considered that in the lead-up to the verdict there would have been a high level of public debate, particularly in Scotland, and that given the extensive media coverage of the trial the sentencing was to be regarded as "topical". Furthermore, the trial resulted in a high-profile politician being sentenced to jail, which was clearly a serious subject of importance. However, the Committee also noted that the verdict had been delivered, and the judge had told Mr Sheridan he had to expect that he would go to prison, over a month previously, and therefore (even taking into account his proposed appeal) Mr Sheridan's conviction was now a matter grounded in fact as opposed to opinion. Taking all these points into account, the Committee concluded that it was likely that the subject was no longer an "active" controversy for the purposes of Guideline 4.4.7 at the time of broadcast. Notwithstanding this, the exercise of impartiality must still be adequate and appropriate to the output taking into account the subject and nature of the content (a post-sentence background report on a sentencing following a controversial trial), the likely audience expectation for such a report and any signposting that might influence the audience.



In light of this, the Committee considered the complainant's allegations that the programme was not impartial in that it did not offer sufficient weight to Mr Sheridan's views, versus those of the SSP and Ms Kane. It noted that the news item included a statement from Ms Kane:

Rosie Kane: If Tommy was being sentenced for what he has done to the left in Scotland he would be getting life, that's the amount of damage, that's how bad it is. It's our job now to try to build that trust up and it would be lovely to be able to do that but when people are screaming "lying and scabbing scum" at you then it confuses the public further.

It also noted a statement from the judge:

Reporter: Lord Bracadale told him he'd be sentenced to three years but he only had himself to blame. "You brought the walls of the temple crashing down not only on your own head but also on the heads of your family and your political friends and foes alike".

The Committee noted, set against these perspectives, statements from Mr Sheridan, Mrs Sheridan as well as Mr Sheridan, via his lawyer Aamer Anwar.

Reporter: Sheridan then went on "I remain a passionate socialist and on my release I will return to fight for justice, for equality and for peace."

And

Gail Sheridan: Tommy has dedicated his life to helping others. The real reason why he has been imprisoned today is because he has fought injustice, inequality with every beat of his heart. But it won't be long before Tommy is back stronger and continuing the fight.

And

Aamer Anwar: "This multi-million pound prosecution will separate me from my wife and child and that will be heart breaking but I will continue to fight the system that protects the real criminals, the rich and the powerful. I have today instructed my solicitor to lodge an appeal against conviction."

And it noted that part of the statement from Mrs Sheridan also featured in the headlines.

Gail Sheridan: The real reason why he has been imprisoned today is because he has fought injustice, inequality with every beat of his heart.

Taking these points into account, and viewing the footage in the context of a short news item, the Committee was satisfied that due weight and prominence had been given to a sufficient range of significant views and perspectives, such that the programme makers had exercised due impartiality, including for the purposes of the Guidelines on controversial subjects.

In terms of the rationale for showing the footage, the Committee noted that it is common for journalists to get interview requests turned down and found no evidence here to suggest that the inclusion of the footage was indicative of any personal prejudice of the programme maker. It considered that it had been clearly signposted to the audience that the footage had been included to illustrate Mr Sheridan's reasons for declining an

interview, and accepted that this was the BBC's editorial reason for including the footage. The Committee noted that the footage referred to (i.e. the admission of group sex) had previously been shown by the BBC, albeit in a slightly extended form, so some of the audience may already have been aware of it. The footage in the brief news item had been abbreviated to remove the pauses so that five separate elements of speech together formed one sentence; however, the Committee did not consider that this resulted in the footage being inaccurate because nothing substantive was removed: only the pauses in the sentence such as to reduce the length of time of the footage.

The Committee also noted the complainant's concern that the Rosie Kane interview took place after sentencing, so the points she raised could not have been put to Mr Sheridan. However, it considered the reason for showing the footage was clearly signposted in the programme (i.e. to illustrate Mr Sheridan's reasons for refusing an interview). The Committee noted that Ms Kane's central allegation was that Mr Sheridan had damaged the left in Scotland. The Committee noted that the BBC wanted to put the same points to Mr Sheridan and Ms Kane, and therefore it was irrelevant which order the interviews would have occurred in.

The Committee noted the complainant's allegations that the producer had repeatedly stated that Mr Sheridan had failed to express remorse, and his view that the programme therefore lacked impartiality as the effect of the reporting was to be critical of Mr Sheridan's failure to apologise or show remorse. It also took into account BBC Scotland's explanation that the phrase was repeated because it came in separate portions of the programme (i.e. a headline, a cue read by the presenter, and within the report). The Committee noted that the programme also included three references to Mr Sheridan's declaration that he intended to appeal his conviction, and that his legal team and family were well represented in the programme. The Committee noted relevant extracts:

### **Headlines:**

Jackie Bird: His last moments of freedom; Tommy Sheridan is jailed for three years for lying to a court about his sex life. As he is driven away to begin his sentence, a defiant Sheridan, his supporters and family, offered no apology for the crimes that led to his downfall.

Gail Sheridan: The real reason why he has been imprisoned today is because he has fought injustice, inequality with every beat of his heart.

Jackie Bird: We're live outside Barlinnie prison in Glasgow where Tommy Sheridan is tonight behind bars, but just how long will he stay there?

### **Programme Introduction:**

Jackie Bird: Tommy Sheridan is tonight beginning a three year sentence for perjury. He offered no apology or showed any remorse as the sentence was announced. The former MSP was jailed for lying under oath in his defamation case against the News of the World over stories about his sex life. Today the Judge told Sheridan he'd brought the walls of the temple crashing down upon himself and family. But outside the court his wife and solicitor remained defiant saying he would appeal his conviction and come back stronger. Our Political Correspondent, Raymond Buchanan reports:

### **Programme report**

Raymond Buchanan: Barlinnie bound but even in the back of a prison van Tommy Sheridan is still smiling – a defiant grin from a man just told he won't be seeing

his wife or child any time soon. A couple of hours earlier it seemed to be a different Sheridan.

Reporter: How you feeling today?

Tommy Sheridan: Pensive.

Reporter: What will you be saying to the Judge, Tommy?

TS: I don't know yet.

RB: But he did. As Sheridan left home he knew he wasn't expected back, that's why he'd packed for prison. At court, and for the final time, he clasped his wife's hand for what is now a familiar walk. This is where he was convicted of perjury accused of being a liar, a cheat and a hypocrite. But there was no apology, no remorse. Inside, with his wife sitting nearby, he addressed the Judge from the dock. "I ask you to take into account the impact custody will have on my five year old daughter, my wife and my elderly parents." Sheridan then went on "I remain a passionate socialist and on my release I will return to fight for justice, for equality and for peace."

...

RB: It was also announced through his solicitor that Sheridan would challenge his conviction for lying.

Aamer Anwar: "This multi-million pound prosecution will separate me from my wife and child and that will be heart breaking but I will continue to fight the system that protects the real criminals, the rich and the powerful. I have today instructed my solicitor to lodge an appeal against conviction."

The Committee also noted that Mr Sheridan could not have made an apology or expressed remorse after sentencing but noted that it was true, as a matter of fact, that an apology had not been expressed before sentencing, for example as evidence in mitigation, in the Court, and nor had this formed part of the statement read on his behalf following the verdict. However, it also noted that it was clear that he intended to appeal, as this point was made three times. The Committee therefore decided that the programme was duly impartial as a whole and that there was no evidence to support the view that the programme-maker was biased. The Committee also noted that it was inescapable that Mr Sheridan had been convicted of perjury, and it was therefore of the view that the tone and language of the presenter simply conveyed this fact, rather than presenting any personal prejudices.

For each of the above reasons, the Committee concluded that the programme was not in breach of the Impartiality Guidelines.

### **Finding: Not Upheld**

#### Supplementary points for consideration:

The Committee noted the complainant's allegations regarding the integrity of BBC journalists more generally. On the basis of the conclusions it had reached in relation to these two programmes, and only considering the allegation within the context of these two programmes, it considered that there was no evidence before it that there was any substance to this allegation.

Finally the Committee noted that the complainant had alleged that the ECU's response was wholly inadequate in its response to points 1.1, 1.2 and 2.1, 2.2 and 2.3 above. It then noted that these issues had now been considered in substance by the Committee, and that it had concluded that none of these items breached the Editorial Guidelines.

## ***BBC News At Six and BBC News At Ten, 9 December 2011***

### **1. Background**

On 9 December 2011, BBC One *News at Six* and *News at Ten*, and the BBC News Channel, carried reports of events at a European Union summit in Brussels.

The summit had culminated in David Cameron, UK Prime Minister, vetoing an EU treaty change because he had been unable to negotiate the safeguards he said he had been seeking for UK-based financial services, particularly those based in the City of London.

As part of these reports, Stephanie Flanders, the BBC's Economics Editor, analysed what Mr Cameron had been seeking and whether the results had been worthwhile, in view of financial services in the City being "an industry that accounts for a tiny fraction of our economy".

The complainant said that the use of the word "tiny" in this context was inaccurate and was not impartial.

### **2. Complaint**

#### **Stage 1**

The complainant contacted the BBC on 10 December 2011 to complain that the Economics Editor's description of the City of London as a "tiny" part of the economy was misleading. He was dissatisfied, following a response, with being referred to a blog that had attempted to answer more general criticism of the BBC's coverage of Britain's role in Europe, and wrote again during December 2011, and January and February 2012.

BBC Audience Services responded on 16 February 2012, saying that the Economics Editor now acknowledged that the word "small" might have been more appropriate than "tiny", given that financial services accounted for close to 10 per cent of GDP in 2010. The complainant remained dissatisfied, saying that no one seemed able to admit an error had been made.

#### **Stage 2**

The complainant corresponded with the Editorial Complaints Unit (ECU) on 18 February and 8 March 2012 setting out his complaint and emphasising that he considered that as well as inaccuracy there had been bias against the government's policy on Europe. He said the statement had been repeated a number of times in later broadcasts without any apparent editorial supervision, and it had not been corrected or apologised for.

The ECU wrote on 21 March 2012. It did not uphold the complaint, though it said it believed the wording used in the report had been inappropriate and that it would have been better if Stephanie Flanders had used a different description. The ECU said that, while "small" would have been a better word than "tiny", the description was not materially inaccurate. The ECU also said that the contribution from a City firm which had followed immediately after would have been sufficient to offset any misleading impression or bias because the contributor had emphasised the importance of the City to the UK.

The complainant responded on 31 March 2012, saying that viewers would have given more weight to the BBC's Economics Editor than to someone from a City firm. He disputed whether one person's bias could be countered by a different opinion expressed by

someone else. He also pointed to the Editorial Guidelines stating that impartiality should be shown by presenters, reporters and correspondents.

### **Appeal to the BBC Trust**

The complainant appealed to the BBC Trust on 31 March 2012 saying that the BBC Executive had not taken his complaint seriously. He asked for the points he had made in his correspondence with the ECU to be considered in his appeal.

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

- Point (A) Use of the word “tiny”, repeated a number of times, had been factually incorrect.
- Point (B) The inaccuracy had not been picked up, corrected or apologised for.

The complainant raised the following point in relation to the impartiality of this item:

- Point (C) He suspected the word “tiny” had been used as a result of the Economics Editor’s bias against the government’s policy on Europe.

### **3. Applicable Editorial Guidelines**

The Editorial Guidelines on Accuracy (Section 3) and Impartiality (Section 4) are applicable to this case.

The applicable sections of the Accuracy guidelines are:

#### 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...”

“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 Principles

“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...” (3.2.2)

“The BBC must not knowingly and materially mislead its audiences...” (3.2.3)

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

The applicable sections of the Impartiality guidelines are:

#### 4.1 Introduction

“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 Practices

"News in whatever form must be treated with due impartiality, giving due weight to events, opinion and main strands of argument. The approach and tone of news stories must always reflect our editorial values, including our commitment to impartiality." (4.4.12)

"Presenters, reporters and correspondents are the public face and voice of the BBC – they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy..." (4.4.13)

"BBC staff and regular BBC presenters or reporters associated with news or public policy-related output may offer professional judgements rooted in evidence..." (4.4.31)

## **4. The Committee's decision**

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

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

This appeal raised issues requiring consideration of the guidelines relating to accuracy and impartiality.

### **Accuracy**

#### Point (A)

The Committee first considered the complainant's allegation that the word "tiny", in the context of the contribution made by the City of London to the UK economy, had been factually incorrect.

It noted what had been said by Stephanie Flanders, the Economics Editor, in the following transcript of the relevant section of the broadcast:

"So, two big questions: is this the right plan for the eurozone and is it the right deal for the UK?

"Let's start with here at home. We know David Cameron wanted a good plan for the City, not an open-ended veto, officials say, but a level playing field so banks

don't get penalised for being outside the Euro, and the national power to regulate banks more aggressively than everyone else if you want to.

"He also wanted a chance to veto any transfer of powers to Brussels. He didn't get these things, so he said 'no'. But was it worth it for an industry that accounts for a tiny fraction of our economy?"

It then noted what had been said at Stage 1 of the complaint by BBC Audience Services:

"In hindsight and in the context of this specific report and the fact that the financial services sector in the UK accounted for close to 10 per cent of GDP in 2010 according to the ONS Blue Book, she [Ms Flanders] acknowledges that the word 'small' might have been more appropriate to use in this report."

The Committee looked at a further submission from the BBC in relation to this statement:

"...when Stephanie Flanders responded to the Audience Services adviser – briefly logged in from Tokyo where she was filming – she was responding to him about the use of the word 'tiny'. In fact, it was the adviser who inserted the reference to 10 per cent of GDP and it would actually have been better to refer to the size of the City, which was the real reference point."

The Committee agreed that, in the context of the broadcast report, the contribution of the City of London, rather than the UK's financial services sector as a whole, was the most relevant figure to consider.

It looked at what the BBC had had to say about the size of the City's contribution in response to the investigation for the appeal:

"4.5 per cent of the labour force work in the whole of the financial sector, of which less than a third (300,000) work in Canary Wharf or the City. That part of the economy generates something of the order of – at most – 5 per cent of GDP. On either measure this is not a large proportion of the UK economy..."

The Committee also looked at other statistics, including information from the Office of National Statistics and from the City of London itself. It concluded that it was correct to say that the City generated 4-5 per cent of GDP. While this figure was not large, as the BBC had pointed out, it was certainly not "tiny".

While noting that all parties accepted that the word "tiny" was inaccurate, the Committee then considered whether the BBC had, nevertheless, achieved "due accuracy", as defined by the Guidelines, in a way that was adequate and appropriate to the output, and whether the content had been presented in clear, precise language.

In considering these factors, the Committee looked at the following statement from the BBC:

"When BBC News was made aware of the complaint we acknowledged that it would have been better to say 'small' rather than 'tiny' but we do not think that it was a major inaccuracy because audiences will have understood that the City does not form a big proportion of our economy, contrary to what they might have thought given the prominence of financial services in the news agenda and the role of banks in fostering growth in the wider economy. On a test of accuracy, we accept therefore that the word was inaccurate but not 'unduly inaccurate'..."



"We regret the use of the word 'tiny' but given our acknowledgement when contacted by Audience Services for a response, we considered the complaint resolved."

The Committee also considered an argument put forward by the BBC's Editorial Complaints Unit (ECU) at Stage 2 of the complaint. The ECU, which did not uphold the complaint, said that an interview with Terry Smith, Chief Executive of City brokers, Tullett Prebon, which followed on as part of the same item immediately after the BBC's Economics Editor's analysis

"...would have been sufficient to offset any misleading impression that Ms Flanders' description may have given".

The ECU concluded, therefore, that

"this would have prevented the audience being seriously or materially misled".

The Committee considered two differently edited versions of what Mr Smith had said, broadcast earlier and later in the evening in the various news bulletins. Version one ran:

"Protecting it [the City] was essential, whatever you may think about the faults of the City. Allowing it to be either regulated in a way that transferred some of that business to Europe, or in ways that prevented us doing business was something he [the Prime Minister] had to step in on."

In version two Mr Smith said:

"The City is the UK's biggest export industry, it's a very big taxpayer, it's a very big employer and the decision last night really protects it from either having that business transferred to continental Europe or from having it being prevented from doing business by some sort of tax or regulation."

The Committee did not accept the BBC's reasoning on "due accuracy", above, or the ECU's argument that Mr Smith's statements in some way "balanced" a factual inaccuracy from the Economics Editor. The Committee considered that opinions might, in certain circumstances, be balanced by contrary opinions, but what had been stated here was a matter of fact, not opinion.

In addition, however well-informed Mr Smith might be, viewers might reasonably assume, given the context, that Ms Flanders' statement of fact was likely to be more objective, as the BBC's Economics Editor, than Mr Smith's, as the Chief Executive of a City firm, given that it was the City that stood, potentially, to lose or gain as a result of the UK's stance.

On Point (A), therefore, the Committee agreed with the complainant that due accuracy had not been achieved in this respect by the BBC.

#### Point (B)

The Committee then considered the complainant's allegation that the inaccuracy had not been picked up, corrected or apologised for.

The Editorial Guidelines on Accuracy were considered, which require the BBC to demonstrate that it had corrected mistakes quickly, clearly and appropriately.

The Committee noted that the Economics Editor's report had been broadcast in the same form, using the word "tiny", several times during the evening on different news bulletins.

It concluded that it was regrettable that the inaccuracy had not been picked up early on, when the report could have been re-edited for later bulletins.

The Committee noted that the Economics Editor in response to the complaint at Stage 1 had indicated that she thought the word 'small' would have been more appropriate. The Committee did not consider that an on-air apology and correction would be proportionate and it did not think there was anything further that needed to be done at this stage to correct the error.

The Committee had two further observations on accuracy in relation to this appeal.

First, it made the point that an unequivocal agreement with the complainant that the word "tiny" was wrong might have saved a great deal of the time and effort that had been expended on this appeal.

Second, the Committee fully understood that mistakes in relation to using the wrong word happened, especially during a live broadcast or when events were unfolding quickly. The Committee agreed that its finding on accuracy on this occasion should not be taken as a general criticism of the Economics Editor's work.

The complaint was upheld with regard to Accuracy.

## **Impartiality**

### Point (C)

The Committee next considered the complainant's allegation that the word "tiny" had been used as a result of the Economics Editor's bias against the government's policy on Europe.

The Committee considered the Guidelines on Impartiality and examined the transcript of the item and the complainant's correspondence.

It noted that the complainant had not set out specifically how he considered the impartiality guidelines had been breached, beyond saying that when Ms Flanders used the term "tiny" she could not rationally have believed it to have been true. He said at Stage 1:

"I suspect that the statement was made because of clear bias against the government's decisions relating to the EU taken last week."

In correspondence with the ECU at Stage 2, it was noted that he said, further, that he had had no problem identifying her personal prejudices.

The Committee noted that the inference was that Ms Flanders deliberately downplayed the role of the City in order to make it appear that the Prime Minister had been mistaken in his actions in trying to protect the City.

The Committee could find no evidence to support this element of the complainant's appeal. It considered that the Economics Editor had asked a legitimate question, albeit that she had used the wrong word. The Committee concluded therefore that there was no breach of the Guidelines on Impartiality.

The complaint was not upheld with regard to Impartiality.

**Finding: Upheld with regard to Accuracy. Not upheld with regard to Impartiality.**

## **Newsnight, BBC Two, 13 September 2011**

### **1. The programme**

*Newsnight* is BBC Two's flagship news and current affairs programme. It is described on the BBC website as providing "comprehensive coverage of the day's important national and international news stories". Jeremy Paxman is one of *Newsnight's* four regular presenters. The programme is on every weekday and this edition was on from 2230 to 2320.

On 13 September 2011 the programme included a live studio interview conducted by Jeremy Paxman with Professor Richard Dawkins about Dawkins' new book *The Magic of Reality: How We Know What's Really True*. It was preceded by a brief studio introduction followed by a scripted segment of the item which featured narrated extracts from the book accompanied by Dave McKean's illustrations and commentary from Mr Paxman. The whole item, including the live interview, was 8'40" in duration.

### **2. The complaint**

#### **Stage 1**

The complainant wrote to the BBC and alleged that its presentation of what he described as "Dawkins' new anti-creation/religion book" was biased and offensive. He referred in particular to Jeremy Paxman's description of all belief/religion as "myth and hogwash"; his statement that "nobody" believed in, for example, Lot's wife in the Bible or creationism, neglecting the millions around the globe who do so and his description of those with belief as "stupid people" even though Dawkins said in his interview that 40% of the US public believe the Genesis creation account.

By the end of Stage 1 the complainant had received two responses from the BBC. The first explained that it didn't agree that the item showed anti-Christian bias. It said the discussion centred on Professor Dawkins' new book and was not about the merits of religion or science as a whole but sought instead to explore the methods of disseminating knowledge to children. It said Mr Paxman countered Professor Dawkins' assertions on a number of occasions, stressing that stories and myths were often more interesting than bare scientific explanation, and suggesting that religious interpretations offered comfort and inspired imagination. It also said Paxman was playing "devil's advocate" when he interviewed Professor Dawkins, as for example when he asked him why he was concerned about the teaching of what he described as religious myths. Mr Paxman's comments did not intend to cause offence but were made to initiate a variety of responses from the interviewee. The matter in question was not the validity of Genesis but the reasoning behind Professor Dawkins' vehement opposition to such teachings. It concluded that the BBC believed the interview was conducted in an impartial and appropriate manner.

The second response from the BBC came after the complainant explained that he found its first response unsatisfactory because it ignored his main concerns about the item. These were that Mr Paxman had conveyed his own personal belief/disbelief in the account of creation, belief in God and religion in general and that by using the terms "myth and hogwash" and "stupid people" he had appeared to cause deliberate offence to those with different views to his own. The BBC said that the complainant's concerns about the *Newsnight* item had been raised with the programme team. It explained that the brief piece aimed to explore the tenets of Professor Dawkins' new book as an academic contribution to the problems facing aspects of epistemology. It said Mr Paxman sufficiently challenged Professor Dawkins and that his and *Newsnight's* style is to provoke

debate and reaction and that neither the programme nor the BBC passed judgement on religious belief in any way.

## **Stage 2**

The complainant wrote to the Editorial Complaints Unit (ECU) and reiterated that Mr Paxman had caused offence by statements such as religion being “myth and hogwash” and those who believed in creation as “stupid people”. He also alleged that the *Newsnight* presenter had conveyed his own views about the account of creation, belief in God and religion in general. He said he accepted that Mr Paxman had challenged his interviewee on some points but that the item as a whole was biased and was not an example of professional journalism.

At the end of Stage 2 the ECU had investigated the complaint about the *Newsnight* item against the BBC’s Editorial Guidelines on Impartiality and Harm and Offence. The ECU did not uphold any aspects of the complaint.

The ECU apologised for the delay in responding to the complainant – its letter of acknowledgement about the complaint was sent on 28 October 2011 and its findings on 8 March 2012. It explained this was because initially it had shared the complainant’s concerns, but the programme makers had argued that the focus of the item was not on religion in general but specifically on religious myths. When viewing the programme again, this had caused the ECU to revise its original interpretation. The ECU appreciated that the term “myth”, in relation to religion, had a wide range of possible meanings but it was clear from Mr Paxman’s reference to “myths and fables and fairy stories”, and from his illustrative examples, that the item was concerned with myth in the sense of explanatory narratives which have been, in the view of most, superseded by scientific explanations and would be generally regarded as untrue if taken literally. It added that the item provided a context in which the use of “hogwash” can be seen as a colourful reference to religious myths rather than a characterisation of religious belief and Jeremy Paxman’s reference to “stupid people” as the presenter playing “devil’s advocate”.

The ECU concluded that if Mr Paxman’s comments were not about religion or religious people in general, the grounds for regarding them as offensive or as expressing a personal view hostile to religion were removed. It also said that to the extent that the item confined itself to the imaginative appeal of religious myths in comparison to alternative scientific accounts of the phenomena, it dealt with a topic which was not “controversial” and did not raise issues of impartiality.

However, the ECU felt one part of the interview did apply to religion in general rather than the imaginative appeal of religious myths and therefore into an area where Professor Dawkins’ views were notoriously controversial. Moreover, Professor Dawkins’ view – that religious beliefs were false while scientific conclusions were true – was not directly challenged. The ECU said it would have been preferable if the interview had remained on uncontroversial ground throughout or, when it strayed off it, if Mr Paxman had conducted the interview differently. However, given the ECU’s view that most viewers of *Newsnight* would already have been aware of Professor Dawkins’ views in this area and would not have been likely to be influenced by another iteration of them, they did not feel this constituted a breach of editorial standards.

## **Appeal to the BBC Trust**

The complainant appealed to the Editorial Standards Committee (ESC) and asked it to investigate what he said was a perception of bias on the part of Mr Paxman on the subject in question (i.e. creation versus evolution, the existence of God) and also the

apparently offensive manner and language which Mr Paxman used when introducing the article and during the interview itself.

### **3. Applicable Editorial Guidelines**

The following sections of the BBC Editorial Guidelines are applicable in this case.

#### **Section 4 – Impartiality**

##### **4.1 Introduction**

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

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

Due impartiality is often more than a simple matter of 'balance' between opposing viewpoints.

##### **Practices**

4.4.13 Presenters, reporters and correspondents are the public face and voice of the BBC – they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on 'controversial subjects' in any other area. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.

##### **Controversial Subjects**

4.4.5 We must apply due impartiality to all our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output, including drama, entertainment and sport.

A 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely.

4.4.6 In determining whether subjects are controversial, we should take account of:

- the level of public and political contention and debate
- how topical the subjects are
- sensitivity in terms of relevant audiences' beliefs and culture
- whether the subjects are matters of intense debate or importance in a particular nation, region or discrete area likely to comprise at least a significant part of the audience
- a reasonable view on whether the subjects are serious

- the distinction between matters grounded in fact and those which are a matter of opinion.

## **Section 5 – Harm and Offence**

### **5.1 Introduction**

...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.

## **Section 12 - Religion**

### **12.1 Introduction**

...We should take care to avoid unjustified offence. We aim to achieve this by ensuring our output is not used to denigrate the religious beliefs of others, while upholding the right to freedom of expression...

For the purposes of the BBC Editorial Guidelines, religious output is defined as output dealing with the religious views and/or beliefs of a religion or religious denomination as the central subject or a significant part.

This section of the Guidelines has considerations both for religious output and any other output concerning religion...

## **4. The Committee's decision**

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

The Committee considered the appeal against the relevant editorial standards, as set out in the BBC's Editorial Guidelines. The Guidelines are a statement of the BBC's values and standards. It noted that the appeal raised issues requiring consideration of the Impartiality, Harm and Offence and Religion Guidelines.

The Committee first considered the complainant's allegation that Mr Paxman was biased against people with religious beliefs when he conveyed his own personal belief/disbelief in the account of creation, belief in God and religion in general.

The Committee noted the transcript of the *Newsnight* item and in particular the section which specifically referred to evolution. The Committee also noted the transcript of the section of the item when it specifically referred to Genesis which describes the creation of the universe by God.

The Committee noted that the interview with Professor Dawkins was described on the *Newsnight* website as follows:

"Richard Dawkins on why science is better than myth. Evolutionary biologist and outspoken atheist Professor Richard Dawkins' new book *The Magic of Reality* is aimed at children and is intended to teach them how to replace myth with science. Jeremy Paxman spoke to the author."



It also noted that the opening headlines of this edition of *Newsnight* included a short trail for the interview with Professor Dawkins which said:

“...And can scientific fact ever inspire the same affection as religious stories?  
Richard Dawkins goes myth busting with the magic of reality.”

The Committee noted the requirements of the impartiality guidelines and in particular:

4.4.13 Presenters, reporters and correspondents are the public face and voice of the BBC – they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on ‘controversial subjects’ in any other area. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.

It also noted that the guidelines say:

A ‘controversial subject’ may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely.

The Committee noted that at Stage 2 the complainant had accepted that Mr Paxman had challenged his interviewee on some points but that he nonetheless considered the item as a whole to be biased and not an example of professional journalism.

The Committee also noted the BBC’s response to the complainant’s allegations that Mr Paxman was biased against people with religious beliefs when he conveyed his own personal belief/disbelief in the account of creation, belief in God and religion in general. The BBC said that Jeremy Paxman clearly underpinned his approach from a position that in his judgement science has provided a more credible explanation of the world than creationists and others who believe myths are literally true.

The Committee agreed that given Jeremy Paxman’s well-known interviewing style – which aims to provoke reaction and debate – viewers of the programme on 13 September 2011 were likely to have expected a lively discussion between the *Newsnight* presenter and the world renowned evolutionary biologist and atheist Professor Richard Dawkins about his new book *The Magic of Reality*, a book aimed at children and which is intended to teach them how to replace myth with science. The Committee also agreed that the *Newsnight* item was signposted as a discussion of the merits of religious myths versus science and that it had a legitimate and clear editorial purpose.

The Committee agreed with the ECU that Professor Richard Dawkins was not directly challenged by Jeremy Paxman when he expressed his widely known view that religious beliefs are false while scientific conclusions are true. But it also noted that in line with a previous ESC finding, creationism is an argument of faith and the guidelines on impartiality do not encompass the presentation of an argument of faith in science, news and factual programmes when addressing evolution, unless the programmes were directly addressing religion and belief.

(The Committee’s July 2010 finding is available at:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2010/july.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/july.pdf))

The Committee concluded that, given the factors above, the *Newsnight* item had not dealt with a controversial subject as defined by the BBC Editorial Guidelines and that it had achieved due impartiality in a way that was adequate and appropriate to the output given the subject and nature of the content, the likely audience expectation and the clear signposting that would have influenced that expectation.

The Committee therefore agreed that this *Newsnight* item did not breach the Editorial Guidelines on Impartiality.

Secondly the Committee considered the complainant's allegation that Jeremy Paxman appeared to cause deliberate offence to those with religious beliefs by using the terms "myth", "hogwash" and "stupid people".

The Committee noted the requirements of the Harm and Offence and Religion guidelines. It considered whether the *Newsnight* item dealt with matters of religion which were likely to cause offence to those with religious views and beliefs. It noted that about three quarters of the item explored the subject of religious myths rather than religion in general, and that stories from three world religions – the Christian faith, the Islamic faith and the Jewish faith were referenced in the piece.

The Committee noted the transcript of the section of the item when it specifically referred to "myth" and "hogwash" and that these references were made in a scripted introduction which preceded the live interview with Professor Dawkins. This scripted introduction voiceover by Jeremy Paxman was intercut with the narration of extracts from Professor Dawkins' book and illustrated with images from the book produced by graphic artist and film director Dave McKean. The transcript was as follows:

Jeremy Paxman: Give me the child and I will give you the man St. Francis Xavier the founder of the Jesuit movement is supposed to have said. Religious movements the world over try to shape impressionable minds with myths and fables and fairy stories. How the world began. Where the first humans came from. What rainbows are. Now the world's most celebrated atheist, Richard Dawkins, gives a counterblast of fact. His new book "The Magic of Reality" aims directly at children teaching them how to replace myth with science. It's illustrated by the graphic artist and film director Dave McKean.

"Of course no-one really believes that it would be possible to turn a pumpkin into a coach. But have you ever stopped to consider why such things would be impossible?"

JP: You probably haven't because from our earliest years we learn to suspend disbelief. And that apparently is also how we condition impressionable brains to absorb religious hogwash.

"In the creation myth of the Hebrew tribe of the Middle Eastern desert the tribal God YHWH created light on the first of his six days of creation but then surprisingly he didn't create the sun until the fourth day. Where the light came from on the first day before the sun and stars existed we are not told."

JP: Knocking down the scientific accuracy of millennia old stories isn't very hard – rainbows, earthquakes, the origins of humanity, the origins of the universe itself are all explained in ways that a ten year old might follow but a five year old might not.



"According to the modern version of the Big Bang model the entire observable universe exploded into existence between 13 and 14 billion years ago.

Some scientists will tell you that time itself began in the big bang and we should no more ask what happened before the big bang than we should ask what is north of the North Pole."

JP: But therein lies Richard Dawkins' problem. Even with him setting them up as Aunt Sallies the myths remain the better stories carrying an imaginative charge that makes nonsense easier to understand than fact. Fairy tales of whatever world religion retain an untarnishable beauty more easily followed by a small and impressionable Tasmanian child for example.

"A God called Moinee was defeated by a rival god called Dromerdeener in a terrible battle up in the stars. Before he died he wanted to give a last blessing to his final resting place so he decided to create humans but he forgot to give them knees. He absent-mindedly gave them big tails like kangaroos which meant they couldn't sit down."

The Committee went on to note that the final part of the live interview discussed Bible stories and this occurred when Professor Richard Dawkins responded to a question from Jeremy Paxman about the religious myth he personally found most affecting and an example of a wonderful story. Professor Dawkins said:

"...Genesis, as a story, as a myth, yes ... as long as you don't think it's true. The trouble is that forty per cent of the American people think it's literally true and they probably think Lot's wife was turned into a pillar of salt as well for that matter."

The Committee noted the transcript for this section of the item and specifically that Jeremy Paxman spoke about "stupid people" in a question he posed to Professor Dawkins. This distinguished the reference to "stupid people" from the scripted nature of the references to "myths and hogwash". The transcript was as follows:

JP: Which is your favourite myth by the way?

RD: I like the one about Dromerdeener and the one that you heard Lara actually reading I think that's a lovely one, it's very amusing. Some of the Aztec ones are very funny as well. You can't pronounce the names.

JP: Do you find any of them affecting, personally affecting, you think gosh what a wonderful story?

RD: Actually Genesis is, as a story, as a myth yes. And I mean as long as you don't think it's true. The trouble is that forty per cent of the American people think it's literally true. And they probably think Lot's wife was turned into a pillar of salt as well for that matter.

JP: Do you really care that there are a lot of stupid people around?

- RD: I do actually yes. I really do. I mean I care that children are being misled by those stupid people, I care that children
- JP: Why?
- RD: Because I think that children deserve to know what's true and what's wonderful about the world into which they've been born. It really is true and it really is wonderful and it's such a crying shame if children are denied that by ignorant and stupid adults as you've described them.

The Committee noted that the BBC said it believed it was appropriate in the context of the item to use the terms "myth" and "hogwash", and that Jeremy Paxman was clearly referring to myths as "hogwash" and not all religion. The Committee also noted that the BBC said "hogwash" was the contention that it is possible to literally turn a pumpkin into a coach, that it was not an attack on all religion, and that it had been very careful to make all efforts to avoid that impression by constructing the sequence in a way that made it clear that piece was talking about religious myths.

The Committee concluded that, given all the factors above, there was a clear editorial purpose for the use of the term "myth" in the context of the item about Professor Richard Dawkins' new book which was aimed at children and intended to teach them how to replace myth with science.

However, the Committee recognised that some *Newsnight* viewers were unlikely to have expected Jeremy Paxman's typically robust and confrontational interviewing style to extend to the use of the terms "religious hogwash" when introducing the story of Genesis, and "stupid people" when talking about those with a literal belief in the Old Testament in the context of the item about religious myths.

Although the Committee did not agree with the complainant that Mr Paxman's use of the terms "religious hogwash" and "stupid people" were intended to cause deliberate offence, particularly to those with religious views and beliefs, it nevertheless agreed that they were offensive to some of the audience and that there was no clear editorial purpose for their use in the context of this *Newsnight* item, taking account of generally accepted standards.

The Committee therefore concluded that the item breached the Editorial Guidelines on Harm and Offence. It added that it regretted the offence caused to some viewers by the use of the terms "religious hogwash" and "stupid people" on this occasion.

**Finding: Not upheld with regard to Impartiality. Upheld in part with regard to Offence.**

## Application of Expedited Procedure at Stage 3

### 1. Background

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards to apply the expedited complaints handling procedure.

The Head of Editorial Standards wrote to the complainant on 25 April 2012 noting that the BBC's Complaints Framework, para 5.4(b) states:

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

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

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

- (a) are repetitions of substantively identical complaints that have already been resolved; and/or
- (b) although within their remit, are shown on investigation to have no reasonable prospect of success; and/or
- (c) in the case of the ECU, fall outside its remit; and/or
- (d) after rejection by the ECU or the department concerned, are persistently and repeatedly appealed unsuccessfully to the BBC Trust or the BBC Trust's Editorial Standards Committee (ESC).

The Head of Editorial Standards took the view that the complainant had made complaints to the BBC which fell under categories (b) and (d). That is, they:

- had no reasonable prospect of success; and
- were persistently and repeatedly appealed unsuccessfully to the BBC Trust.

This was based on the fact that, since 2008, the complainant had made 14 unsuccessful appeals, as follows:

1. BBC News, 10:30pm, BBC One, 19 May 2007: a complaint regarding a comment made by the BBC Security Correspondence, which he said breached the impartiality guidelines.
2. Ten O'Clock News, 1 July 2007: a complaint regarding a comment made by a correspondent on the Ten O'Clock News, which he said breached the impartiality guidelines.

3. BBC News at Ten, BBC One, 3 October 2008: a complaint about a comment made by the BBC's Political Editor about Lord Mandelson.
4. Mock the Week... Again, BBC Two, 29 October 2008: a complaint relating to a comment made by Frankie Boyle.
5. News at Six, BBC One, 22 April 2009: a complaint that the BBC's coverage of the Government's Budget statement was in breach of the guidelines on impartiality.
6. Newsnight, BBC Two, 28 September 2009: a complaint that Jeremy Paxman had breached editorial guidelines.
7. BBC News at Ten, BBC One, 25 November 2009: a complaint that the coverage of the Iraq Inquiry gave a misleading impression.
8. Iraq Inquiry Coverage, BBC News at Ten, BBC One, 27 November 2009 and 21 January 2010: a complaint that coverage of the Chilcot Inquiry was not impartial.
9. Iraq Inquiry Coverage, BBC News Channel, 29 January 2010: a complaint that a report about the Chilcot Inquiry was inaccurate and biased.
10. "Jeremy Paxman's photograph of the decade", The Guardian, 13 November 2010: a complaint that Jeremy Paxman breached the guidelines on conflicts of interest and undermined the impartiality of the BBC.
11. The Big Questions, BBC One, 23 January 2011: a complaint that an item about the Iraq War breached the Impartiality Guidelines.
12. The Big Questions and Newsnight: a complaint about the handling of complaints about these programmes.
13. Newsnight, BBC Two, 21 February 2011: a complaint that an interview between Jeremy Paxman and Douglas Alexander MP showed a lack of impartiality.
14. Secret Iraq, BBC Two, 6 October 2010: a complaint that the programme breached the Impartiality Guidelines.

The Head of Editorial Standards was aware that one other complaint during this period was partly upheld: that was a complaint relating to the coverage of government crime figures, which the complainant considered to be in breach of the accuracy and impartiality guidelines (BBC News at Six, BBC News summary at 8pm and BBC News at Ten, BBC One, 24 January 2008).

The aspect of the complaint that was upheld by the ESC related to the handling at Stage 1 of the process.

The Head of Editorial Standards also noted that the complainant had complained to the Director of the Trust about the post-decision handling of one of the above complaints (News at Six, 22 April 2009) and that this was partially upheld: the Director of the Trust agreed to highlight to the Editorial Standards team his expectation that they should communicate the final nature of the Committee Secretary's decision regarding

summarising complaints in appeals findings in a clearer way in future. However, the other aspects of that complaint were not upheld.

Taking these points into account, the Head of Editorial Standards did not consider that (a) a partial uphold from over three years ago and (b) a partial uphold of the post-decision handling of a complaint, detracted from an overall picture of a "history of persistently and/or repeatedly making complaints" which either had no reasonable prospect of success and/or were persistently and repeatedly appealed unsuccessfully to the Trust. Consequently, she decided that the expedited procedure should be applied.

The complainant requested that the Committee review the decision of the Head of Editorial Standards. He said that every one of his complaints had been about a matter of substance. The fact that they had been rejected said more about the Trust's relationship with the BBC than the nature of the complaints. He also argued that of the 17 complaints identified by the Head of Editorial Standards, he had achieved partial success on three of them and partial success on two of the nine that were deemed substantive enough to be put to the ESC, leaving just five where the complaint was not considered substantive enough to be put to the ESC. His record was therefore not so bad that it warranted the expedited procedure.

### **The Committee's decision**

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

The Committee noted the 14 complaints which had been unsuccessfully appealed to the BBC Trust since 2008. The Committee noted that nine of these had been taken on appeal and had not been upheld, while five had been deemed not to meet the requirement for investigation on appeal in that they did not raise a matter of substance.

The Committee noted that the complainant argued that all of his complaints raised a matter of substance in that they related to potentially serious misdemeanours. However, the Committee was mindful that the "matter of substance" test is not about the seriousness of the allegation but whether the appeal has a reasonable prospect of success.

The Committee noted the complainant's argument that nine of the 14 cases cited by the Head of Editorial Standards were deemed substantial enough to go forward to the ESC. However, it considered that ground (d) applies where the appeal is "unsuccessful", and in each of the nine cases the appeal was not upheld.

The Committee also noted that in his response to the Head of Editorial Standards' decision, the complainant said that there were three complaints which were partially upheld. The Committee noted that there was one appeal which was partially upheld with regard to Stage 1 complaints handling, and one partial uphold by the Director of the Trust in terms of clear communication of the finality of the drafting. The Committee agreed that these did not undermine the overall picture of a "history of persistently and/or repeatedly making complaints" which either had no reasonable prospect of success and/or were persistently and repeatedly appealed unsuccessfully to the Trust.

The Committee noted the complainant's comments with regard to appeals where the Committee endorsed the view of the Editorial Complaints Unit or considered that the complaint was already resolved at ECU level. The Committee considered first, that the expedited procedure was being applied only to the appeal stage of the complaints procedure and second, that an endorsement of an ECU decision or a finding that a

complaint has already been resolved still means that the appeal has been 'unsuccessful' for the purposes of the expedited procedure, in that the appeal has not been upheld.

The Committee agreed that the expedited complaints handling procedure should be applied to the complainant at Stage 3 for a period of two years from the date of the Head of Editorial Standards' letter to him (i.e. until 25 April 2014).

The Committee noted that this means the Trust will continue to read and consider his appeals but will only investigate them if they are "substantive complaints", that is, only if they appear to raise a substantive issue or disclose a serious prima facie case of a breach of the Editorial Guidelines where there is a significant prospect that his complaint will be upheld.

**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.

## ***Remembrance Sunday: The Cenotaph, BBC One, 13 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**

In 2010 the complainant wrote to the BBC to complain about Israel's exclusion from the commentary for the Remembrance Ceremony broadcast that year on BBC One.

The BBC responded explaining that the countries mentioned were rotated with the aim of recognising those who had contributed. The complainant did not pursue this complaint further.

The complainant wrote again to the BBC in 2011 expressing concern that while David Dimbleby's commentary at the Cenotaph service of remembrance that year mentioned that Zimbabwe was not represented among the wreath laying nations, it did not mention Israel in the same context. The complainant cited the contribution made by Jews and future Israelis to the British war effort, and rejected the implication, which he said was in the commentary, that there was only one country missing.

The BBC responded after consultation with DCMS, explaining that the occasion was seen as primarily one for the Commonwealth. Thus it was proper to refer to Zimbabwe which had been a member but not Israel which had not.

#### **Stage 2**

The complainant wrote to the ECU saying that, in spite of the reference to the Commonwealth in the previous correspondence, he still believed it was wrong to omit Israel. The fact that Israel was not remembered at the Cenotaph, when Zimbabwe was, would have caused grave offence to the families of those who had suffered at the hands of the Nazis and to those who strove to honour their memory.

The ECU considered the complaint against the Editorial Guidelines on Accuracy and Portrayal.

The ECU said that the context of the remark about "one country" was the Commonwealth. The script stated that this section of the parade concerned Commonwealth nations and David Dimbleby was clear that this was not about absence from the ceremony as a whole, but from the part to do with the Commonwealth. This was evident from the mention of the expulsion of Zimbabwe from the Commonwealth. Because neither Israel nor Palestine were ever members of the Commonwealth, they

were not mentioned in this context. The ECU concluded that the complaints about inaccuracy and therefore insensitivity both failed.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, saying that the Cenotaph coverage was insensitive because it did not recognise the contribution of the Jews of Palestine. It was insensitive for Israel not to be mentioned at the same time as Zimbabwe and this could not be put down to forgetfulness because the complainant himself had pointed out this omission the previous year. The complainant added that the main reason for his complaint was that he wished the contribution of these men and women to be recognised in the *Remembrance Sunday* programme.

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 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 Head of Editorial Standards agreed with the reasoning given by the ECU. This pointed out that the section of the programme to which the complainant referred was specifically and wholly about the Commonwealth countries and their contribution. The commentary said:

"...And now Swaziland and Tonga, Fiji, Bangladesh, the Bahamas, Grenada, Papua New Guinea, the Seychelles, Commonwealth of Dominica and the little island of St Lucia in the Caribbean.

And, as the last group prepares to come forward, there is one country missing whose citizens fought in both World Wars and that is Zimbabwe, now expelled from the Commonwealth, the former Southern Rhodesia. Many people here will remember the service that they gave particularly in the Second World War, many in the Royal Air Force.

Here, in this contingent, St Vincent and the Grenadines, Belize, Antigua and Barbuda, the Maldives..."

Neither Israel nor the British mandate of Palestine were ever part of the Commonwealth. The Head of Editorial Standards understood that Israel could be considered to be eligible now, should the country wish to apply, but that so far this had not happened.

Given the context of the role of Commonwealth countries, the Head of Editorial Standards believed that the ESC would be unlikely to uphold a breach of the editorial guidelines. The complainant's suggestion that the contribution of Jews should be recognised in the *Remembrance Sunday* programme was a matter of editorial judgement for the BBC Executive and not for determination by the Trust.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He stressed again the contribution made by Jewish Palestinians and other Jews in World War Two. The service of



remembrance was for those from the British Empire who had served in the British armed forces and it was totally wrong to say there was one country missing and that country was Zimbabwe. He said that Palestine was part of the British Empire and Israel was therefore missing every bit as much as Zimbabwe. In his view, David Dimbleby's comment was therefore inappropriate, insensitive and inaccurate.

### **The Committee's decision**

The Committee was provided with the Senior Editorial Strategy Adviser's letter setting out the Head of Editorial Standards' decision not to proceed and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted that the complainant was keen to stress the contribution made by Jewish Palestinians and other Jews to the Allied cause in World War Two and that the Remembrance service was for all those in the British Empire who had served in the British armed forces. The Committee noted that it was in this context that the complainant felt David Dimbleby's comment was inappropriate, insensitive and inaccurate.

The Committee considered the ECU and Head of Editorial Standards' responses, which outlined that the section of the programme in which the comment in question was featured, was specifically and wholly about the Commonwealth countries and their contribution in World War Two. The Committee noted that neither Israel nor the British mandate of Palestine were ever part of the Commonwealth.

The Committee also noted that the complainant's suggestion that the contribution of Jews should be explicitly recognised in the *Remembrance Sunday* programme was a matter of editorial judgement for the BBC Executive and not a matter for determination by the Trust.

The Committee agreed that, given the specific context of acknowledging the role of Commonwealth countries, it did not consider that there was a reasonable prospect of success for an appeal on the basis that the BBC's Editorial Guidelines had been breached.

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

## ***Family Guy*, BBC Three, 17 December 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 he had watched the programme from about half way through until its conclusion and found it offensive. He said it was an unmitigated attack on Christ and Christians. In particular, he highlighted scenes showing a dog chewing a cross, Christ being portrayed as a rapist and Christians burning books.

In response, BBC Audience Services explained that *Family Guy* was an irreverent comedy which joked about many topics, including religion, gender, sexual orientation, politics, history and disability. They said that they did not believe any of the programme's jokes carried the message that one group of society should be openly despised and that *Family Guy*'s humour fell into the category of exaggerated, silly satire. It was not to be taken too literally and the majority of the show's viewers appreciated that it was not trying to attack a section of society.

Audience Services apologised that the complainant found the programme offensive but concluded that it did not go beyond the bounds of what was acceptable comedy for the BBC Three audience.

#### **Stage 2**

The complainant wrote to the Editorial Complaints Unit (ECU) reiterating his concerns and relating them to the BBC Editorial Guidelines. In particular, he said that:

- a dog was made to chew on a cross which breached the Religion principle in section 12.2.3 which says:  
  
"We must be aware of the religious sensitivity of references to, or uses of names, images, deities, rituals, scriptures and language at the heart of the different faiths and ensure that any uses of, or verbal or visual references to them are editorially justified within generally accepted standards."
- Christ Himself was portrayed as being about to commit rape which breached the same Religion principle.
- Christians were portrayed as burning books on logic which breached the Harm and Offence requirements in section 5.4.39 which says:

"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."

The complainant also highlighted the fact that the Stage 1 response made reference to what was acceptable comedy for the BBC Three audience. The complainant said that he

was the BBC Three audience and he found it unacceptable. He said that decades ago, viewers of Tom and Jerry knew to expect so-called “blackface gags”, but the BBC had long since removed them.

The ECU considered the complaint in relation to the BBC’s Editorial Guidelines on Religion and Portrayal.

In response, the ECU explained that the potential for elements of the programme to cause offence was affected by the overall context of the series. The ECU said that the context of *Family Guy* was such that the relationship between aspects of the real world and their portrayal in the series was so distant that it was more a case of fantastical allusion than portrayal.

In relation to a dog being made to chew a cross, the ECU said that this was an example of an absurd premise that a dog could be converted to Christianity by using a cross as a stick to be retrieved and that in itself rested on the more fundamentally absurd premise that a dog might be capable of conversion to Christianity when it professed itself an atheist.

In relation to the scene in which the complainant said that Christ was about to commit rape, the ECU said that the scene was capable of more than one interpretation. It could not be said with certainty that Christ was about to commit rape, although it was clear his intentions were not honourable.

Finally, in relation to the scene where Christians were portrayed as burning books on logic, the ECU said that this was hyperbolically exaggerated.

The ECU therefore did not uphold any aspect of the complaint.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, saying that he understood *Family Guy* was an animated cartoon but nonetheless the three elements referred to in his complaint were offensive because of the fact that they were scripted and depicted.

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 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 Head of Editorial Standards endorsed the ECU’s explanation that context was important when considering the potential of an item to cause offence. She noted that *Family Guy* was a fictional American animated sitcom featuring the dysfunctional Griffin family which consisted of father Peter, mother Lois, daughter Meg, son Chris, baby Stewie and Brian the family dog. The show was set in the fictional town of Quahog, Rhode Island and lampooned American culture, often in the form of cutaway gags and tangential vignettes. It was described on the BBC Three website as a “subversive animated comedy about the everyday trials and tribulations of the Griffin household”.

The Head of Editorial Standards noted that the episode under appeal was from series 7, entitled “Not all Dogs go to Heaven”. The programme synopsis for this episode said:

"Meg becomes extremely religious and tries to convert Brian from atheism. Meanwhile after the family visits a Star Trek convention, Stewie kidnaps the entire cast of Star Trek: The Next Generation and forces them to hang out with him."

The Head of Editorial Standards took account of the BBC's guideline on Harm and Offence 5.4.39 (quoted above) and also the guideline on Religion 12.4.6 which says that:

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

The Head of Editorial Standards said that *Family Guy* was well understood as an animated, hugely exaggerated and silly satire. This particular episode was characterised by two equally surreal storylines – the first involved the talking baby making a teleporter in his bedroom and using it, and the second involved Meg's mission to convert the talking dog Brian from an atheist to a believer in God.

The Head of Editorial Standards was sorry that the complainant was offended by what he perceived to be three specific attacks on Christianity. However, she believed that, as a scripted and depicted comedy programme, *Family Guy* could legitimately cover matters relating to religion taking account of generally accepted standards. These standards were clearly a matter of judgement and applying them must take account of the content, the context in which it appeared and the editorial justification. *Family Guy* was a returning series for BBC Three which had well established expectations for its tone and content.

The Head of Editorial Standards therefore did not consider that the appeal had a reasonable prospect of success and concluded that it should not proceed to the ESC.

The Head of Editorial Standards also noted that the appeal letter included a complaint about the ECU response. However, she did not believe that the evidence provided by the complainant raised any matters of substance in relation to complaints handling issues. This element of the appeal therefore did not have a reasonable prospect of success. The Head of Editorial Standards also believed it would be disproportionate to ask the ESC to rule on the matter.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He again contrasted the BBC's justification of *Family Guy* with its treatment of Tom and Jerry, and emphasised the importance to Christians of treating the Cross and person of Christ with respect. He did not accept the explanation given relating to the context of the item which he said was not supported by the creator of the show himself. He also remained concerned that his complaint had not been handled properly.

### **The Committee's decision**

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser on behalf of the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 finding from the Editorial Complaints Unit and the item in question.

The Committee noted the complainant's comment that he had not received an answer to his point regarding the removal of "blackface" references from Tom and Jerry cartoons. The Committee considered that it was not necessary for the BBC to address this point in order to answer the complaint as there was not a valid analogy with Tom and Jerry.

The Committee noted that the relevant guidelines on Harm and Offence and Religion both allow for editorial justification and audience expectations to be taken into consideration. The Committee noted the background to the series and this episode in particular which had been provided by the ECU and the Head of Editorial Standards. The Committee agreed that, given the context of the programme and the likely expectations of regular viewers of *Family Guy* and BBC Three viewers in general, there was sufficient evidence to show that any risk of offence was editorially justified.

While the Committee was sorry that the complainant had been offended by the programme, it agreed that there was not a reasonable prospect of success for this complaint on appeal.

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

## **“Credit rating warning: George Osborne v Ed Balls”, BBC News Website, February 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 the BBC’s Political Editor, Nick Robinson, had written his article (concerning credit rating warnings) initially without having the full facts because he was away on holiday. He said that the BBC should employ professionals who took their jobs seriously and were concerned about their credibility in being impartial.

In reply, the Editor, BBC Political News, argued that it was a reflection of Mr Robinson’s dedication that he kept across political developments even while on holiday. Mr Robinson’s initial article had been a reasonable political assessment and his subsequent update, posted on the BBC website later that day, had clarified and added to this rather than contradicted it. He did not believe there was any question of Mr Robinson resorting to guesswork or showing bias, as the complainant had alleged.

#### **Stage 2**

The complainant escalated his complaint to the Editorial Complaints Unit. An ECU Complaints Director considered the complaint in relation to the Editorial Guidelines on Accuracy and Impartiality.

The Complaints Director said that Mr Robinson’s comments had been informed by media interviews with Mr Osborne and Mr Balls. While he may not have read the underlying statement issued by Moody’s in relation to the credit warning, it was reasonable for Mr Robinson to comment on the basis of the Chancellor’s and Shadow Chancellor’s public utterances on the subject. He was therefore satisfied that Mr Robinson had met the requirements of the accuracy guidelines which said that content must be well sourced and based on sound evidence.

The Complaints Director also did not believe that the omission of any specific reference to the Moody’s statement led to a lack of due accuracy, particularly bearing in mind that the subject of the article was clearly labelled as “Credit rating warning: George Osborne v Ed Balls”.

Turning to the question of due impartiality, the Complaints Director said that Mr Robinson had offered a summary of Mr Osborne’s and Mr Balls’ positions which met the requirement to reflect the main strands of the argument. Mr Robinson had concluded by offering a professional judgement based on the interviews he had heard. The Complaints Director could not agree that this was evidence of bias, pointing out that journalists were entitled to use their knowledge and expertise to offer considered and informed judgements.

### **Appeal to the BBC Trust**

The complainant escalated his appeal to the BBC Trust.

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

The Head of Editorial Standards said that she believed the Complaints Director had addressed the complainant's concerns appropriately. On the question of accuracy, the focus of Mr Robinson's initial comments was the reactions of Mr Osborne and Mr Balls to Moody's statement, each arguing that the statement had endorsed their positions. She noted that the complainant believed Mr Robinson should have waited until he had seen the full detail of the statement. The issue for the ESC, however, was whether Mr Robinson's comments breached the rules on accuracy and the Head of Editorial Standards did not believe they did so.

Turning to impartiality, the Head of Editorial Standards said that the Complaints Director had highlighted the provision in the guidelines for journalists to offer considered and informed judgements, as well as to report the facts. She said that she realised the complainant believed Mr Robinson had demonstrated bias. However, she did not believe this was supported by the article in question which summarised the two sides and offered a brief assessment based first on the reactions to the statement and later on a reading of the statement itself.

For these reasons, the Head of Editorial Standards did not believe that 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, arguing that simply saying what the Head of Editorial Standards believed, without taking account of facts and evidence, was insufficient. The complainant also took issue with the Head of Editorial Standards' assessment that he was complaining about left wing bias.

### **The Committee's decision**

The Committee was provided with the letter from the Head of Editorial Standards setting out her decision not to proceed with the appeal and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted the complainant's view that Nick Robinson should have waited until he had seen the Moody's statement before writing his article. However, given the clear focus of the article on the public comments of the Chancellor and Shadow Chancellor, the Committee agreed that there was not a reasonable prospect of success for an appeal on the basis that the BBC's guidelines on accuracy had been breached.

In considering the complainant's allegation that Nick Robinson writing the article before he had seen the Moody's statement showed bias, the Committee noted that the complainant had not been explicit about which way the bias went. However, the Committee agreed that in summarising the positions of the Chancellor and Shadow Chancellor the article had met the requirement to reflect the main strands of the argument. The Committee also agreed that it was legitimate for Nick Robinson to offer his professional judgment based first on the reactions to the statement and subsequently on the statement itself.



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 World Class trails, BBC News Channel

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

### The complaint

#### Stage 1

The complainant wrote to the BBC to complain about trails for the *BBC World Class* project, which he described as advertisements for the British Council. The complainant questioned whether the BBC should be carrying such adverts and alleged that giving preferential treatment to the British Council was prejudicial to fair competition. He also made a number of specific criticisms and raised concerns about the appropriateness of the British Council as a partner in the *BBC World Class* scheme.

In reply, BBC Audience Services explained that *BBC World Class* was a BBC legacy project for the London Olympics to inspire UK schools to twin with schools around the world, and that the British Council had the expertise to facilitate this twinning process, with teams in the UK and around the world to support the schools involved. The British Council, as a publicly funded charity, offered this service free to schools as well as providing funding from government and other sponsors to enable schools to make the most of their international work. Audience Services therefore concluded that the British Council was an entirely suitable partner for the BBC. They also said that the partnership with the British Council was not an exclusive one, because *BBC World Class* worked with organisations across the school twinning sector which offered a linking service to schools.

The complainant wrote again complaining about the continuing *BBC World Class* trails which, in his view, promoted the British Council. He noted that the BBC Editorial Guidelines referred to public value partnerships and queried whether the trails were in breach of the Charities References in Documents (Scotland) Regulations 2007. He also noted, amongst other things, that plans to insert advertising into World Service English output had been criticised heavily by Sir John Tusa (a former managing director of the World Service). He also mentioned other reported allegations about the Connecting Classrooms programme.

#### Stage 2

During Stage 2 of the BBC's complaints process, three aspects of the complaint were investigated by BBC Audience Services, who approached the *BBC World Class* project team before responding. First, Audience Services explained that the BBC's partnership with the British Council began in 2005 with the launch of the BBC's schools twinning project and had increased in scale since 2010 in preparation for the BBC's work for London 2012. It was now defined as a "public value partnership" because the BBC aimed to provide a richer experience for its audience by working with an external partner. Audience Services did not agree that the British Council was an inappropriate partner and that the partnership brought the BBC into disrepute. They suggested that, if the complainant had concerns about specific matters, he should contact the British Council directly.

Second, Audience Services responded to the allegation that the reference to the British Council when promoting *BBC World Class* amounted to advertising. They said that the BBC's Editorial Guidelines on partnerships stated that the BBC should credit partners fairly

and that the short film which the complainant had complained about was not an advertisement but a trail for an existing strand of BBC activity.

Third, Audience Services rejected the suggestion that the *BBC World Class* website was a British Council advertisement and that the BBC was in breach of the guidance issued in connection with the Charities References in Documents (Scotland) Regulations 2007. However, the British Council's charity numbers had been added to the website for clarity.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, asking it to investigate further his concerns that the trails had become a vehicle to promote the British Council at the expense of other partner organisations involved with *BBC World Class*. He wondered whether money had changed hands and suggested that the trails were free advertisements for the British Council disguised as giving public credit to a valued partner. He also queried why "valued partners" became "public value partnerships" when a BBC legal team working with expert advisers from the British Council decreed that they were offering "public value". He repeated concerns about other reported allegations regarding the Connecting Classrooms programme.

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

She said that the appeal had been carefully considered in light of the section of the BBC's Editorial Guidelines which related to Public Value Partnerships, as well as the BBC's Guidance Note on Partnerships. She had been informed by the BBC Executive that:

*BBC World Class* was editorially part of the London 2012 project and linked to the BBC's Olympic Dreams Network – a group of British schools partnered with the schools of the 26 World Olympic Dreams athletes who were following the athletes' journeys to the London Olympics. The British schools were selected in 2010 through Olympic Dreams School Search, a BBC and British Council competition. Their prize was to attend Olympic Dreams Live, a special British Council event in January 2011 which took place at the British Museum. It brought together teachers from all the schools involved, as well as pupils from all the secondary schools. More than 80 schools from 17 countries attended. *BBC World Class* also followed the twinning story with 'spotlight' features and picture galleries to catch up with the school teams' progress.

*BBC World Class* was the BBC's school twinning project and part of its educational legacy for the 2012 Olympics. The website said its mission was to support teachers in developing school-to-school partnerships, encouraging pupils to share creative work inspired by the Olympics. It also said that *BBC World Class* encouraged and helped children and schools get their stories on-air and online across the BBC. In addition, it provided the inspiration and resources to help teachers bring their projects to life through reports, blogs and features; schools could use the BBC's assembly resources - film clips, scripts and discussion ideas - on topics inspired both by the Olympics and international stories; and the Schools World Service provided stories every month for schools to share.

The BBC worked in partnership with the British Council which supported 4500 schools twinned through *BBC World Class*. It was the BBC's main partner in this endeavour and invested time, effort and money into delivering the project. The BBC said that the British Council was the one organisation that had the international presence, capacity, scale and reach to serve the BBC audience. However it also said that *BBC World Class* was an inclusive partnership with others in the sector whose work was also valued and supported, although its other partners did not work at scale and by comparison with the British Council made minor, but nonetheless important contributions to the project. These partners tended to provide specialist services such as linking with schools in a single country, twinning in the developing world, online collaboration, or curriculum specialisation. Some charged facilitation fees, others were free to schools.

In addition to the British Council there were 26 other partners listed on the *BBC World Class* website. The BBC said many of these were sustaining partnerships and the partners did not directly recruit schools to join *BBC World Class*. This was the case with The Japan Society and the Pahar Trust, for example. Others such as Link Ethiopia supported 40 schools from World Class; Intuitive Media less than 50 schools from World Class and Rafi.ki 21 schools.

When a teacher signed up to twin their school it was the British Council that received the information and began to facilitate the whole process. The other partners were featured because the BBC said it did not want to create a monopoly or undervalue the important work undertaken by small non-governmental organisations and other smaller projects working in this field.

Also unlike the other partners the British Council had a team dedicated to administering the BBC's special 2012 project. This team communicated with the interested schools; found a partner school; if it was a non-UK school it verified its educational status; it provided grants for schools to visit one another and funded Olympic Dreams Live, the special event in January 2011 referred to above.

The Head of Editorial Standards said that the complainant had submitted supporting evidence, a major part of which consisted of blogs on [dblackie.blogs.com](http://dblackie.blogs.com) to which he himself regularly posted comments. These blogs predominantly related to his dealings with the British Council as a former employee in the Middle East.

The complainant also provided evidence in connection with concerns he had raised in relation to certain alleged activities of the British Council's Connecting Classrooms programme, which he said the BBC had been persistently advertising in recent months. The Head of Editorial Standards said that enquiries made by the Trust had established that the BBC had not promoted the British Council's Connecting Classrooms programme in connection with its *BBC World Class* initiative. Furthermore, these alleged activities came to light in January 2012 – post-dating both the original complaint to the BBC and the start of the public value partnership between the BBC and the British Council.

The Head of Editorial Standards said that she was satisfied that *BBC World Class* was an editorially justified project in which the BBC was working collaboratively with the British Council and other partners to extend creative possibilities and maximise public value. She did not agree that this partnership compromised the BBC's editorial values or its independence. The choice of the British Council as the major partner in the project was justifiable because it appeared right to say it was an organisation with the international

presence, capacity, scale and reach to serve the intended BBC audience – UK teachers and pupils wishing to twin with schools all around the world.

On the question of whether the BBC received any money from its partnership with the British Council, the Head of Editorial Standards said that the Trust had been assured that this was not the case. The British Council certainly funded aspects of the twinning project – including hosting events like Olympic Dreams Live held at the British Museum; employing a dedicated team to facilitate the twinning of UK schools with schools across the globe; and providing grants to enable twinned schools to visit one another. This complied with the BBC Editorial Guidelines which stated that

“any money from partners must only go into off-air activities or support material and no money from an external partner may be used for any programme costs”.

The complainant had also asked why “valued partners” became “public value partnerships”. This stemmed from the Stage 2 response which said:

“The BBC has worked in partnership with the British Council for many years, with the World Service as the main stakeholders on behalf of the Corporation. The external partnership between the BBC and the British Council for World Class dates back to 2005, when the BBC’s school twinning project launched and has been carefully managed with input from the BBC’s legal teams and external partnership specialists in our Editorial Policy unit. The collaboration has increased in scale since 2010 in preparation for our work for London 2012 and is now defined as a ‘public value partnership’ as we aim to provide a richer experience for our audience by working with an external partner and we therefore rebut your allegation that they [British Council] are not an appropriate partner.”

The Head of Editorial Standards explained that the term “public value partnerships” was first formally used and defined in the June 2005 edition of the BBC’s Editorial Guidelines. Although the collaboration between the BBC and the British Council predated this formal definition, the BBC said that BBC content producers were routinely advised about any proposed and active external partnerships both by BBC Editorial Policy and the BBC’s legal team, however the partnerships were described.

As regards the complainant’s concern that the *BBC World Class* trail had become a vehicle to promote the British Council, the BBC Executive had said that the trail was for the public service initiative which inspired British schools to twin with schools around the world. It had run on the BBC News Channel since May 2011 and much less frequently on BBC World News. It was posted online on the *BBC World Class* website and in the past few weeks, in the final run up to London 2012, an audio version of the trail had been used on World Service radio. The trail was 32 seconds long and included the credit “in partnership with the BRITISH COUNCIL” at the end, which was fully onscreen for the last five seconds of the trail. The BBC’s Editorial Guidelines stated that “any BBC credits for partners must be appropriate and editorially justifiable”. The BBC also had guidance notes on Partnerships which stated that:

- “any on-air credits for partners must be appropriate and editorially justifiable. Editorial policy may be consulted about the nature of credits
- the partner must be genuinely involved in the initiative and there should be no on-air credit merely for funding some supporting service or event
- credits must not involve hyping”

The Head of Editorial Standards agreed with the BBC Executive that the credit for the British Council on the *BBC World Class* trail, which was referred to Chief Adviser, Editorial Policy, was editorially justified, appropriate and in line with this guidance.

In conclusion, she did not consider 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 made various points including:

- Every time the BBC ran what he considered to be adverts for the British Council without showing the Council's Scottish charity number, the BBC was breaking Scottish law.
- There was no editorial reason to single out any partner on the trail unless it was a paid advertisement.
- The fact that the Council was sponsoring BBC events confirmed that the trails were paid for adverts.
- The arrangement between the Council and the BBC was anti-competitive.
- Other organisations such as Unesco were capable of delivering school twinning on a global scale.
- The BBC was compromising its editorial independence every time it ran an advert for the British Council.
- In over 50 years he could think of no other organisation which had received such BBC "plugging".

### **The Committee's decision**

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with further correspondence from the complainant, the Stage 2 finding and the trail in question.

The Committee noted that the complainant had raised concerns about the appropriateness of the British Council as a partner in the *BBC World Class* scheme. It also noted that he was concerned that the British Council had been used at the expense of other organisations. The Committee noted that the complainant had alleged that the trails were in fact paid adverts for the British Council.

The Committee noted the description of the *BBC World Class* project that had been provided to the Head of Editorial Standards, and the explanation of why the British Council had been chosen as a partner. The Committee agreed that the BBC's reasons for choosing the British Council appeared sound and the Committee had not seen any evidence to conclude that the arrangement was inappropriate. The Committee noted the BBC's statement that the arrangement with the British Council was not exclusive and that there were other partners in the sector who, while not involved on the same scale as the British Council, made important contributions to the project.

The Committee noted that the complainant had raised concerns in relation to certain alleged activities of the British Council's Connecting Classrooms programme. The Committee noted that these alleged activities post-dated the start of the public value partnership with the British Council, and it was satisfied that the partnership was editorially justified and did not compromise the BBC's editorial values or its independence.

The Committee noted the complainant's claim that the trails were adverts for the British Council. The Committee did not agree that this was the case as the purpose of the

campaign was to promote awareness of the *BBC World Class* project, to which the British Council was the primary contributor. The Committee noted the requirements of the guidance on Partnerships that any on-air credits for partners must be appropriate and editorially justifiable, and that the partner must be genuinely involved in the initiative. The Committee agreed that there was no reasonable prospect of success for an appeal on the grounds that the *BBC World Class* trails had breached this requirement.

The Committee also noted that in the latter stages of his correspondence the complainant had alleged that the BBC was in breach of Scottish law by not making reference in the trails to the British Council's charitable status. The Committee noted that this law did not appear to be relevant to the broadcast trails as it applies specifically to documents. The Committee noted, however, that the charity number had been added to the relevant BBC web pages and it agreed that this was good practice. The Committee therefore did not consider that there was a reasonable prospect of success for this element of the appeal.

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



## ***The Boys Who Killed Stephen Lawrence, BBC One, 26 July 2006 (Complaint made out of time)***

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

### **The complaint**

#### **Stage 1**

The complainant wrote to the BBC on 8 March 2012 complaining about factual inaccuracies in the programme which had been broadcast on 26 July 2006. He said that the programme was not an accurate account of events when looked at in conjunction with the Macpherson Report and Kent Inquiry, and contained politicised speculation. He also alleged that BBC News and Current Affairs had systematically misrepresented the Lawrence case over many years.

In reply, BBC Audience Services noted that the complainant had contacted them previously with similar complaints about coverage of the Stephen Lawrence case using different addresses, and that they had nothing to add to their previous responses.

#### **Stage 2**

The complainant wrote to the Director, BBC News, alleging that BBC News had consistently and deliberately misrepresented the facts of the Stephen Lawrence case. He specifically criticised *The Boys Who Killed Stephen Lawrence*.

The Head of Editorial Compliance and Accountability, BBC News, responded saying that she did not intend to address the complaint about *The Boys Who Killed Stephen Lawrence* because, under the BBC's complaints procedure, a complaint should normally be submitted within 30 days of a broadcast. She added that it would not be feasible to look into a concern that was six years retrospective.

Regarding the complaint that BBC coverage since then had misrepresented the facts of the case, the Head of Editorial Compliance and Accountability said that it would not be reasonable to review all BBC News' coverage over the past six years and the complainant had not pointed to any specific reports which he would like investigated. Regarding more recent coverage of the trial of two men accused of the murder of Stephen Lawrence, the BBC adhered to very strict rules on court reporting and she included links to several BBC News reports of the case.

The Head of Editorial Compliance and Accountability concluded by saying that the BBC had to make careful use of finite resources, and it led to duplication of effort if the complainant sent similar complaints from different email accounts to various addressees. She asked that in future the complainant use the standard complaints webform to contact BBC Audience Services.

### **Appeal to the BBC Trust**

The complainant escalated his appeal to the BBC Trust, repeating that the documentary in question distorted the facts of the Stephen Lawrence case.

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 transcript 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 had noted that the complaint had been made substantially outside the time limit set in the BBC complaints procedure and she did not consider that the complainant had provided good reasons for the delay. She therefore considered that Trustees would agree that it would not be a reasonable use of BBC resources to consider the complaint and the appeal would not have 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 said that he first watched the programme in February 2012. The programme was still live and, given the nature of the Stephen Lawrence case, there was something exceptional about it. He denied that he had made similar complaints to the BBC using different addresses and repeated his claim that BBC News and Current Affairs was part of a "highly politicised media circus" surrounding the case.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the Head of Editorial Standards' decision not to proceed with the appeal, and the complainant's letter asking the Committee to review the decision.

The Committee noted that the complaint was made in 2012 regarding a programme broadcast in 2006. The Committee noted the explanation provided by the Head of Accountability, BBC News, that it would be unfeasible to look into a programme complaint after such a lapse of time, and that the BBC normally only took complaints up to 30 days after broadcast.

The Committee noted the Head of Editorial Standards' view that the complainant had not provided good reasons for such a lengthy delay in making the complaint. The Committee noted that in his challenge to the Head of Editorial Standards' decision the complainant said that he had first viewed the programme in February 2012.

The Committee was mindful that the time limits built into the complaints process are there to ensure that the BBC's finite resources are appropriately apportioned. The Committee noted that the process states that complaints should be made:

"Within 30 working days (or exceptionally the BBC may allow longer if the BBC decides there is a good reason for the delay) from the transmission or publication..."

The Committee noted that any delay should be considered in light of the seriousness of the issues raised by the complainant. However, the Committee was satisfied that the complaint did not raise a matter of substance that would justify waiving the normal complaints and appeals procedure.

The Committee noted that the complainant had also raised the issue of the BBC's general coverage of the killing of Stephen Lawrence. The Committee noted that the Head of Editorial Compliance and Accountability for BBC News had said that it would not be reasonable to review all of BBC News' coverage over the past six years and the complainant had not pointed to any specific reports which he would like investigated. The Committee agreed that in the absence of any specific allegations to test it was appropriate for the Head of Editorial Compliance and Accountability to respond in the way she had.

The Committee noted that the complainant refuted the BBC's claim that he had submitted the same complaint using multiple email addresses. Given that the decision not to take the complaint forward was not based on this allegation, the Committee considered that the disputed claim was not relevant to its decision not to take this appeal.

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

## Application of expedited complaint handling procedure at Stage 1

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

### The complaint

#### Stage 1

The complainant wrote to the BBC alleging that *Question Time* panels had been consistently made up of a disproportionate number of Jewish people.

In reply, BBC Audience Services said that the complaint would not be answered and referred to a previous email from BBC News sent to the complainant in October 2011. This related to the large number of complaints about the BBC's reporting of the Middle East sent by the complainant to the BBC and stated that, in accordance with the BBC's framework for handling complaints, its expedited complaints handling procedure would now be applied to any complaints made by the complainant relating to this subject. For a period of two years the BBC would continue to read any complaints submitted, but they would not be investigated unless they appeared to raise a substantive issue or disclosed a serious prima facie case of a breach of the Editorial Guidelines where there was a significant prospect that the complaint might be upheld.

#### Stage 2

The complainant then wrote to the Editorial Complaints Unit (ECU) saying that the October 2011 email referred specifically to complaints relating to the Middle East, not to other complaints about BBC News. He therefore asserted that his complaint about *Question Time* should be investigated. He said that the company which produced *Question Time* was heavily staffed by Jewish people and that this, in conjunction with a very high proportion of Jewish people in senior positions within the BBC, was not justifiable under the BBC commitment to having a diverse workforce.

The ECU responded saying that, although the complaint was not directly about an item of BBC news coverage of the Middle East, it did relate to such coverage.

The ECU said it was clear that the complainant's concerns about the make-up of the panels on the programme arose from the views which he thought it likely Jewish panellists would express.

The ECU quoted from a letter sent by the complainant in March 2012:

"If we look at BBC Current Affairs programmes like *Question Time* and *Any Questions*, it is instructive to see how little they have changed over the same period. The same tired format, the same tired old faces (both guests and presenters) and so many of them to an astonishing degree JEWISH, so it wouldn't be unfair to say that this massive over-representation of Jewish people's take on things (quite apart from being inherently unfair) is actually instrumental in 'switching so many people off' from the political system - they are just so boring (AND dishonest)!!

...There are hundreds (nay thousands) of people you could choose from, yet there is a small clique (mostly Jewish) who are continually invited onto all these

programmes whilst simultaneously many of the Editors and Presenters of the programmes are also Jewish (all chums together ?) - how on earth can this be right, when the BBC has a 'Commitment to Diversity' enshrined in their Charter ???

... we are routinely being presented 'the Jewish take' on everything all the time (if I want that I will subscribe to the Jewish Chronicle !)

...and on an even more serious note, the situation in the Middle East isn't going to resolve itself Israel is the key (and the root of the problem) and Israel is never going to be reasonable with anyone (they think we are all inferior to them) they will have to be **forced** to negotiate a settlement, and one of the sure fire ways of ensuring that this happens is for the news media and Current Affairs to start telling the truth about what happens over there – the pro-Israel bias of the BBC News and Current Affairs is disgraceful (and so blatantly obvious) and the fact that so many 'movers and shakers' in the BBC News and Current Affairs are Jewish has nothing to do with this ? Who are you kidding ?”

The ECU said that, from these extracts, it was clear that there was a connection between the complaint about the composition of the *Question Time* panel and complaints about BBC reporting of the Middle East. The ECU therefore concluded that this complaint fell within those to which the BBC had stated it would be applying the expedited complaints process.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, repeating that both the *Question Time* panel and BBC News in general were, in his view, biased in favour of Jewish people.

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 transcripts of the item in question and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

The Senior Editorial Strategy Adviser said that, having read the correspondence, the Head of Editorial Standards believed Trustees would agree that the complaint related to BBC News coverage of the Middle East and therefore fell within the terms of the expedited procedure. This was for the reasons set out by the ECU, namely that the complainant's concerns arose from the views which he thought it likely Jewish panellists would express.

The Head of Editorial Standards also said that the direction of the BBC's editorial and creative output is defined in the Charter as a duty which is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards. She explained that decisions relating to on-screen talent fell within the category of editorial and creative output and were the responsibility of the BBC Executive. In this case, the Head of Editorial Standards was of the view that the complaint relating to *Question Time* and the Executive's choice of panellists/presenters did not raise a substantive issue and, were it to be considered by the ESC, would have no reasonable prospect of success.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal, arguing that the over-representation of Jewish people among senior BBC News and Current Affairs staff and guests on shows like *Question Time* was a breach of its Charter commitments to fairness, impartiality and diversity.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the Head of Editorial Standards' decision not to proceed with the appeal, and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted that the expedited procedure had been applied to the complainant at Stage 1 in relation to complaints about the BBC's reporting of the Middle East. The Committee noted the ECU's point at Stage 2 that there was a clear connection between this subject and the complaint about the composition of the *Question Time* panel. The Committee agreed that this complaint would therefore fall within the expedited procedure applied to the complainant at Stage 1.

The Committee therefore agreed that there was no reasonable prospect of success for an appeal against the decision to apply the expedited handling procedure to this complaint at Stage 1.

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

## **Today, BBC Radio 4, 1 October 2011**

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

### **The complaint**

#### **Stage 1**

The complainant wrote to the BBC raising the following points in relation to a *Today* programme feature on reaction in an Israeli settlement (Itamar) and a Palestinian village (Awarta) to Mahmoud Abbas' recent bid for statehood at the UN:

- there was no mention that the West Bank was illegally occupied Palestinian land
- there was no mention that the settler interviewed was living in an illegal settlement
- the statement that "every inch of ground [in the West Bank] is bitterly disputed" demonstrated the BBC's failure to recognise the illegality of the settlements in international law
- describing the settlement as "Israeli Itamar" gave legitimacy to an illegitimate construct
- there was a failure to challenge controversial and inaccurate statements made by the Rabbi and by other contributors in the Itamar section
- the BBC should not have given airtime to the views of extreme religious fundamentalists
- far more time was given to the Israeli view than the Palestinian one
- there was no translation of the Palestinian mayor's words, just a short paraphrase
- the way the visitors to the settlement were presented gave the appearance that the BBC was deliberately trying to undermine the authority of the UN
- it was emotive and therefore not impartial to describe the murder of the family in Itamar as "appalling"
- by contrast no mention was made of the regular violence of settlers against Palestinians; the one line was reported as an accusation which may or may not be true.

In reply, BBC Audience Services refuted the complainant's allegations of bias, stating that:

- the legal status of the West Bank was mentioned in the introduction
- it was not possible to challenge every point raised in a short item
- it was important to accurately reflect all views on an issue of this nature, whatever one's opinion of those who held them
- the murder of the Israeli family was relevant because it demonstrated how far apart the two sides remained
- the description of the murders as "appalling" was appropriate and was counterbalanced by clear reference to accusations made by Palestinian villagers of a "catalogue of crimes" which included murder allegedly perpetrated by Israeli settlers
- the term "Israeli Itamar" was used in conjunction with "Palestinian Awarta" and accurately described how those living there would see themselves.

Audience Services wrote again to the complainant with comments from Kevin Connolly who presented the feature:



- the terminology used to describe the status of the West Bank, namely that the settlements were “widely seen as a breach of international law”, was reasonable because its status was complicated by the fact that the land in question was Jordanian and not Palestinian when Israel captured it in 1967
- the murder of the Fogel family was “appalling” and it was right to describe it thus
- it was hard to nail down the specific allegations of crimes made by the Palestinians who Kevin Connolly spoke to in Awarta, hence the way in which he described the accusations in his report
- the description of Itamar as Israeli was a recognition of how things stood now: it was a small town full of Israelis which flew the Israeli flag.

## **Stage 2**

The complainant escalated his complaint to the Editorial Complaints Unit (ECU). The ECU did not uphold any of the points in the complaint, coming to similar conclusions as had been given at Stage 1 and adding that:

- the characterisation of the settlements as “widely seen as a breach of international law” carried a sense of almost universal agreement, but acknowledged the existence of a differing view; it fairly and accurately described the current position
- “due” impartiality did not require equal time for each perspective
- the audience would be capable of understanding when it was hearing opinions rather than facts
- there was almost universal condemnation of the murders of the Fogel family, including from the Palestinian side and the murderers were tried and convicted in a court of law; there was no clear equivalent example on the Palestinian side
- the ECU was unable to investigate the allegation of imbalance across the BBC’s coverage of the subject as it was not within its remit.

## **Appeal to the BBC Trust**

The complainant escalated his appeal to the BBC Trust saying that the majority of points raised had not been properly dealt with. He added these specific comments:

- that the settlements were illegal had been decided by the relevant court; the programme therefore gave undue weight to the opposing view
- the reporter’s introductions to interviewees were not sufficient to ensure the listener would reach the conclusion that their contributions were not factually accurate
- the ECU offered no evidence to support its statement that audiences would understand they were hearing opinions rather than facts.

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 transcript of the item in question and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust’s Editorial Standards Committee.

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards had addressed the complaint under five headings.

1. Lack of context; historical and factual inaccuracies

The Head of Editorial Standards noted the complainant said that the programme gave insufficient or inaccurate context such that the viewer would not be able to reach an informed judgement on what they were being told. Specifically the complainant alleged:

- there was no mention that the West Bank was illegally occupied Palestinian land
- there was no mention that the settlers interviewed were living in an illegal settlement
- the statement that “every inch of ground (in the West Bank) was bitterly disputed” demonstrated the BBC’s failure to recognise the illegality of the settlements in international law
- describing the settlement as “Israeli Itamar” gave legitimacy to an illegitimate construct.

The Head of Editorial Standards noted what the *Today* presenter had said in the introduction:

“Mr Abbas says Israeli settlers are the main obstacle to peace and the building of settlements on occupied territory is widely seen as a breach of international law.”

She understood that the complainant’s point was that the programme should have been unequivocal as to the status of the West Bank, and of the settlements, because the UN – and its relevant court – considered the settlements illegal and the West Bank as occupied land.

In the view of the Head of Editorial Standards, characterising the status of the settlements as it did, the programme accurately reported the view of the majority of the international community. While the status of the occupation and settlements was widely seen as in breach of international law, it was not the publicly stated view of every nation. The United States for example had consciously avoided using the word “illegal” in reference to the settlements, preferring instead to label them “unhelpful” and “obstacles to peace”. And as Kevin Connolly pointed out in his reply at Stage 1, the status of the West Bank was complicated: Palestine had never been a sovereign state, prior to 1967 it was administered by Jordan, and Israel therefore disputed the illegality of its occupation and claims that it was de facto Palestinian territory.

The Head of Editorial Standards noted that the complainant stated in his appeal that by characterising the territory as it did, the programme gave undue weight to what was a minority view. The Head of Editorial Standards did not agree with this interpretation for these reasons:

- there were dissenting views, including that held by the US, a major power broker in the region
- the script made it clear that the majority of world opinion did not take Israel’s view and considered their presence in the West Bank to be an illegal occupation
- the script stated “that almost everyone at the UN” saw the settlements as obstacles to peace.

The complainant also asserted that describing Itamar as Israeli conferred it with legitimacy. The Head of Editorial Standards believed this point had been adequately covered in the correspondence. She added that it was clearly stated that Itamar was considered by most of the world to be an illegal settlement built on land which most of the world considered was illegally occupied. It was called Israeli because those living there were legally Israelis. The Head of Editorial Standards considered that the description was purely a way of reinforcing in listeners' mind the distinction between the settlement and the neighbouring Palestinian village.

She therefore concluded that an appeal alleging the item was not duly impartial or duly accurate in regard to any of the points in this section would not have a reasonable prospect of success.

## 2. Failure to challenge contributors stating controversial or inaccurate views

The Head of Editorial Standards noted that the complainant had alleged in his initial complaint that by failing to challenge the Rabbi in the settlement, the programme presented his views as fact. The Head of Editorial Standards noted the section in question:

Kevin Connolly:	Rabbi Moshe Goldschmitt, a spiritual leader in the Israeli settlement of Itamar, sees a land promised to the Jewish people in the Bible; a contract immune to any amount of worldly manoeuvrings of the United Nations.
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Rabbi Goldschmitt:	We feel that the land is given to us by God, and this is what it says in the Bible and we're not willing to accept anything else.
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The Head of Editorial Standards agreed with the responses which the complainant had already received. She noted that the item was billed as going to the area to get the view from the ground. She said the audience would be well aware that the Rabbi was the spiritual leader of a community which had already been stated in the programme to be considered illegal by almost every nation in the world. The Head of Editorial Standards considered that the audience would be capable of judging for themselves the weight to give to his opinions – and also the extent to which any part of his contribution could be considered factually accurate in regard to controversial matters.

The Head of Editorial Standards noted that the complainant had said the programme gave a romanticised presentation of Israel with facts replaced by Biblical myth and that the reporter should have presented the Rabbi's notion as absurd rather than presenting his ideas as a rational possibility. The Head of Editorial Standards did not accept that the programme "presented" his ideas. She said that, rather, it aired his views, an intention clearly signposted in the introduction:

John Humphrys:	So, Kevin Connolly went to one of the settlements, Itamar, and to the neighbouring Palestinian village of Awarta to see if they felt that last week's events in New York had changed anything.
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She noted what Kevin Connolly had said in his response to this part of the complaint:

"We do not challenge every statement of fact or opinion made by every contributor to our pieces – if we did our reports would quickly become unlistenable.

This piece was aimed at a sophisticated audience and our listeners are perfectly well able to distinguish a very strong factual claim or statement of opinion made by a controversial contributor from a statement of fact as presented by the BBC.

Of course we often challenge contributors but sometimes we allow them to talk on, so that listeners can form a judgement of how they speak and what they think. It is an effective technique. We don't always use it but it has to remain part of our repertoire.

The reason we didn't include an adversarial exchange in this piece was not because we didn't have the room but rather because we judged the way we presented the Rabbi to be the fairest way of giving our audience a sense of how people in these important and controversial places think and speak."

The Head of Editorial Standards noted that the complainant made similar allegations with regards to the other contributions from Itamar.

The Head of Editorial Standards noted the relevant section of the programme, in which two visitors to Itamar talked about President Abbas:

Israeli visitor 1:	We think that not only he demands this area but he demands every area of Israel. And this is...
Israeli visitor 2:	Everything! Even Jerusalem he wants! He really wants...

The Head of Editorial Standards noted the complainant's view that the reporter should have challenged the statement, pointing out that East Jerusalem was already Palestinian. She noted he also said that the tourist should have been challenged when he subsequently referred to Israel as a Jewish state rather than an Israeli one.

The Head of Editorial Standards noted that the statement was articulated by an Israeli tourist, who was introduced as coming to visit the settlement to demonstrate that not everyone saw the settlers as a problem. She said he was clearly signposted as having a partial view of the dispute. Furthermore, she noted that the comment was prefaced by "we think" – in other words he was qualifying his contribution as an opinion rather than a fact. The Head of Editorial Standards said that it was clearly also the tourist's opinion that the Palestinians had a problem with the Jewish character of the state of Israel. The Head of Editorial Standards did not agree that the comment required correction or challenge.

The complainant said in his appeal that the ECU offered no evidence to support its statement that audiences would understand they were hearing opinions rather than facts. However, the Head of Editorial Standards noted that the *Today* audience was one of Britain's most sophisticated news audiences. In this context, she believed that it was reasonable to expect an understanding that the Israeli contributors were expressing opinions rather than facts.

In conclusion, she did not believe any point raised in this section would have a reasonable prospect of success were it to proceed to appeal.

### 3. Failure to properly put the Palestinian case

The Head of Editorial Standards noted the complainant's allegation that the Palestinian view was confined to the contribution from the Mayor of Awarta, that this was very short (as compared to the Israeli contributions), and that his comments were only paraphrased rather than translated in full.

She noted that the complainant was advised earlier in the correspondence about what the guidelines on impartiality required in practice. It had never been the case that items should feature a stopwatch balance of views on either side of an issue, nor that the character of each contribution be similar. Therefore the fact that the Mayor was heard paraphrased and in translation was not in itself an indication of bias. Very often a reporter would paraphrase a perspective in order to give the point greater clarity than a literal translation. The issue here was whether the Mayor's views were accurately interpreted, and there was no suggestion they were not.

The guideline requirement was that "due weight" was given to important perspectives. In this instance, it could be argued that the Mayor of a town was an important voice to hear and would be more representative of opinion than say a random "vox pop" in the street. The Head of Editorial Standards' view was that the weight his voice carried in relation to voices on the Israeli side was properly balanced.

The guidelines also required that opposing views were fairly represented. The Head of Editorial Standards said she had no reason to believe that the Mayor of Awarta's views were not representative of those of his villagers: Mr Abbas may seek to proclaim statehood, but on the ground the real issue remained the continued existence of the settlements, and without their removal there could be no real peace.

The Head of Editorial Standards considered the issues raised here and reached the conclusion that the fact that the Palestinian viewpoint was made more concisely than the Israeli one did not make it less powerful or balanced. It was a coherent point that backed up the generally held view at the UN. In contrast, the complainant challenged the points made by the Israeli contributors arguing that their reasoning was unsound and inaccurate, and that it was wrong to air the views of religious extremists. The Head of Editorial Standards said that allowing one side additional space to air their views did not itself indicate bias, if by airing those comments the listener was left better informed as to the parties' respective positions. That was what the guidelines meant by due impartiality and the Head of Editorial Standards did not believe an appeal on this point would have a reasonable prospect of success.

#### 4. The introduction to the visit by the Israeli tourists suggested the BBC was trying to undermine the UN's authority

The Head of Editorial Standards noted that the complainant's original allegation concerned a line in the script introducing the Israeli tourists who were visiting the settlement:

"...not everyone sees (the settlers) as the problem, even if it seems that almost everyone at the UN does"

She noted what the complainant stated in his original complaint:

"...we have a BBC journalist who appears to be attempting to console the settlers, and almost encouraging them to carry on and not pay any attention to the UN. Is this a deliberate attempt to undermine, in the minds of the Today audience, the authority of the UN over Israel and its actions in the West Bank?"

The Head of Editorial Standards said that she interpreted this statement the other way around. The group was clearly introduced as Israeli tourists, here to reassure the settlers that they were not alone. To her the script was highlighting how isolated the settlement was both physically and emotionally. The visitors had to go through an elaborate series of security barriers, they were tourists but they were Israelis. The Head of Editorial Standards saw it as suggesting that virtually the entire international community opposed Itamar's existence and the only visitors they received were some Israelis. But even if the complainant had not appreciated it from the introduction, it became clear very quickly that they were of a like mind with the inhabitants of the settlement, exemplified by the Israeli visitors' views on the Palestinians' territorial ambitions. As in the previous point, the Head of Editorial Standards did not believe listeners would have been misled about the international view on the legitimacy of Israeli settlements.

The Head of Editorial Standards did not believe that an appeal on these points would have a reasonable prospect of success.

#### 5. The murder of the Israeli family

The Head of Editorial Standards noted the relevant section of the report:

"Israeli Itamar and Palestinian Awatar are a few kilometres and a million miles apart. Two teenagers from Awatar were recently convicted of the appalling murder of five members of a single Jewish family on the settlement. The victims included two young children and a two month old baby. The Palestinian villagers accuse settlers of a catalogue of crimes too from stealing land and attacking schools to murder."

She noted that the complainant said:

"(the reporter) refers to the 'appalling murder of a single Jewish family' in Itamar. While it was appalling, this is a very emotive word for an impartial reporter to be using. There is no mention whatsoever of the daily violence perpetrated by settlers and Israeli forces against Palestinians in the West Bank, or of the mass arrests, beatings and destruction that took place in the neighbouring Palestinian village of Awarta following the murder (with Palestinians not afforded the luxury of the due process of law by their occupiers), with hooded settlers allowed to roam the village and destroy at will. If the murders in Itamar are relevant to this piece, then so are the subsequent events in Awarta and the regular violence of settlers against Palestinians. Without that, the item is unbalanced and cannot lay claim to impartiality."

The Head of Editorial Standards noted that the appropriateness of labelling the murder "appalling" had been covered elsewhere in the correspondence. She had nothing to add to those comments and did not accept that using the adjective suggested the reporter was not impartial in relation to the wider issues being discussed. She noted that the complainant agreed the murders were appalling. As Kevin Connolly commented in his reply:

"...we are not impartial between the baby and the dagger. If a similar crime should be perpetrated against the people of Awarta I would have no hesitation in using similar language."

Regarding the allegation that the item was not even-handed by failing to go into similar detail about crimes committed against the villagers in Awarta, the Head of Editorial Standards noted that the murders were widely condemned, including in the Palestinian

media, where the case was portrayed as not helpful to the cause of Palestinian statehood. One of those convicted was quoted as saying in court:

“I’m proud of what I did, I did it all for Palestine. I would do it again.”

With regard to the description of alleged Israeli crimes, the Head of Editorial Standards noted that the ECU made the distinction between a crime that had been properly tried in court and accusations which remained unproven. She accepted that there may not be the same access to justice for each side, and that allegations against Israeli settlers were less likely to be pursued with the same vigour as those allegedly perpetrated by Palestinians. However, she believed Kevin Connolly had remained faithful to the facts. He explained in his response that he had difficulty establishing hard facts when he was in Awarta. The Head of Editorial Standards did not believe the way in which he described the Palestinian allegations suggested that they were without foundation. And in the context of a news item about the Palestinian bid for statehood, the Head of Editorial Standards did not think there could be any expectation that he should go into any further detail.

The Head of Editorial Standards did not therefore believe that an appeal on these points would have 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 made the following points:

- Once the relevant court decided the settlements were illegal, there was no doubt about it.
- The description of Itamar as Israeli could be interpreted as meaning it was in Israel.
- The Head of Editorial Standards offered no evidence to support her claim that listeners would know how much weight to attach to opinions expressed in the programme.
- Not all of the comments made were qualified as opinions rather than facts.
- Kevin Connolly could have stated that the reason Palestinian claims were reported as accusations was because they did not have the same access to justice as Israelis.

### **The Committee’s decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the Head of Editorial Standards’ decision not to proceed with the appeal and the complainant’s letter asking the Committee to review the Head of Editorial Standards’ decision. The Committee was also provided with the programme item in question.

The Committee noted the points the complainant had raised in his challenge to the decision of the Head of Editorial Standards.

The Committee noted the complainant’s argument that the programme should have been unequivocal as to the status of the West Bank and the legality of the settlements. The Committee noted that he had also said that the description of Itamar as Israeli conferred it with legitimacy. The Committee noted the responses that the programme team had given and agreed that there would not be a reasonable prospect of success for an appeal on the grounds that the programme had been inaccurate or biased in its description of the status of the West Bank and the legality of the settlements.



With regard to the complaint in relation to the views expressed in the item, the Committee agreed that the statements made by the Rabbi and the visitors to Itamar would be understood by the *Today* audience to be statements of opinion and were not presented by the programme as facts. The Committee agreed that the audience would be capable of judging for themselves the weight to give to these opinions, and there was no obligation for the statements to have been challenged by the reporter in order to achieve due accuracy or impartiality.

The Committee also noted the complainant's arguments in support of his complaint that the item had failed to put the Palestinian case. The Committee noted the Head of Editorial Standards' reasoning on this point and agreed that the weight that the Mayor of Awarta's voice carried in relation to the voices on the Israeli side was properly balanced. The Committee also agreed that there was no reason to believe that the Mayor of Awarta's views were not representative of those of his villagers. The Committee agreed that there was not a reasonable prospect of success for an appeal on the grounds that the item had not been duly impartial in its representation of the Palestinian perspective.

In relation to the introduction to the Israeli tourists, which said "...not everyone sees (the settlers) as the problem, even if it seems that almost everyone at the UN does", the Committee agreed that the most likely interpretation of this section was as having the opposite meaning to that construed by the complainant. The Committee agreed that there was not a reasonable prospect of success for the complaint that the reporter appeared to be consoling the settlers and encouraging them to carry on despite the UN's position.

The Committee noted the complainant's view that the report had been biased in the way it had described the murder of an Israeli family. The Committee agreed with the Head of Editorial Standards' decision that the description of the murder as "appalling" did not suggest any bias on the part of the reporter. The Committee also agreed that the reporter had been factually accurate in his description of alleged crimes committed by Israelis. The Committee noted the reporter's explanation that he had experienced difficulty establishing hard facts when he was in Awarta, and it agreed that there was no suggestion in the report that the Palestinian allegations were without foundation. The Committee agreed that, in the context of a report about Palestinian statehood, there would be no expectation for the reporter to go into any further detail in this area. The Committee agreed that there was no reasonable prospect of success for the complaint that the reporter's description of the murder of an Israeli family was not impartial.

The Committee noted the complainant's response to the Head of Editorial Standards' decision and it agreed that he had not raised any points which undermined the reasons the Head of Editorial Standards had put forward for considering that the complaint would not have a reasonable prospect of success on appeal.

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

## BBC Scotland News and discussion programmes

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

### The complaint

#### Stage 1

The complainant wrote to the BBC to complain about an edition of *Call Kaye*, which discussed Scottish independence. He said that the programme featured three pro-independence voices to one pro-union. He did not believe that the calls which made it to air, and which were largely pro-independence, were representative of those received by the BBC. He had rung the show to present a pro-union contribution but had not been called back. He believed that the BBC was scared of upsetting the pro-independence lobby.

In reply, BBC Audience Services supplied a response from the producer of *Call Kaye*. This said that the programme had asked the Scottish National Party (SNP) and the Conservatives to each put forward a representative, and that Christina McKelvie for the SNP and David Mundell for the Conservatives were invited to take part. Since Ms McKelvie could only stay for part of the time the programme was on air, Ewan Crawford had been booked to offer the SNP position once she had departed, in order to maintain a fair balance.

The third pro-independence voice to which the complainant alluded – that of former SNP member, and now Independent MSP, Margo MacDonald – was an unsolicited call. A count of contributors to the programme revealed an even number of pro and anti-independence voices.

The complainant wrote again asking why Ewan Crawford had been booked for this debate and whether he had been put forward by the SNP. The complainant believed that Mr Crawford was given a disproportionate amount of broadcast time on the BBC, and asked what his relationship was with the BBC, in light of his employment there some years before. He accepted that the call from Margo MacDonald had been unsolicited, but remarked that she seemed to have more luck in getting onto the show than most listeners on this subject.

The complainant then listed the appearances made by Ewan Crawford on the BBC – a list that included *Newsnight*, *Newsnight Scotland*, the BBC News Channel, a Nicky Campbell Sunday morning debate and other BBC Scotland programmes. The complainant alleged that Mr Crawford was able to use the BBC as an exclusive mouthpiece for his political views, enabling the elected members of the SNP to avoid public scrutiny.

#### Stage 2

The complainant wrote to the Head of Public Policy, Scotland. In reply, the Head of Public Policy disagreed with the contention that Ewan Crawford was given carte blanche to appear on BBC programmes and confirmed that his previous employment as a BBC journalist was not a determining factor in the invitation to him to appear on the programme. Guests and contributors were chosen for their ability to provide informed comment on particular issues. In the case of *Call Kaye*, Mr Crawford had been invited to participate in the programme as a prominent voice on independence matters. The views he had put forward contributed to the overall debate on this topic and he had been there

to ensure a balance of opinions, taking account of the fact that the SNP MSP, Christina McKelvie, could only stay for part of the programme. This seemed to the Head of Public Policy a reasonable course of action, noting that Mr Crawford had been introduced as “a former SNP strategist”.

The complainant responded, noting that Mr Crawford had again appeared on the previous day’s edition of the *Sunday Politics* show. His interview had been preceded by the comment “the SNP was not willing to put up a spokesperson”. The complainant believed that an existing BBC reporter should have speculated as to why the SNP had not wished to put up a spokesperson, which would have allowed their latest pronouncement on NATO to be scrutinised. The complainant claimed that Ewan Crawford had been given a free ride by his ex-colleagues. The complainant believed it wrong that elected members of the SNP were in his view allowed to “hide behind” Mr Crawford.

The complainant wrote again ten days later pointing out that the previous morning’s edition of *Good Morning Scotland* had followed the same course – the SNP refusing to allow Alex Salmond to appear to discuss his contacts with Rupert Murdoch and the programme choosing instead to interview Mr Crawford. The complainant said this was another example of the party refusing to be held accountable.

BBC Audience Services responded confirming that the programme had invited Mr Salmond to appear, but this invitation had been declined.

### **Appeal to the BBC Trust**

The complainant escalated his appeal to the BBC Trust, arguing that the BBC’s relationship with the ex-BBC employee, Ewan Crawford, was preventing an unbiased political debate. As the SNP was the majority party in the Scottish Parliament, the BBC should not be allowing them to avoid public scrutiny.

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 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.

Referring to the complainant’s concern about an imbalance of views on *Call Kaye*, the Senior Editorial Strategy Adviser explained that the Head of Editorial Standards noted that the BBC’s impartiality guidelines require that output:

must be inclusive, reflecting a breadth and diversity of opinion. (**Impartiality 4.4.1**)

They further state that:

the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC’s impartiality. (**Impartiality 4.4.2**)

And on the specifics of when audiences contributed to radio phone-ins, the guidelines require that:

[Responses should not be given a wider significance than they merit] and we should take care not to misrepresent the relative weight of opinions expressed.  
**(Impartiality 4.4.4)**

The Head of Editorial Standards believed the BBC Executive had demonstrated compliance with the impartiality requirements in its earlier responses, as the two principal points of view were represented throughout *Call Kaye*. They provided a voice for each of the pro and anti-views throughout the programme by ensuring that when the MSP left, she was replaced by another pro-independence speaker, and they achieved a balance between those views throughout the phone-in. As a result, the Head of Editorial Standards believed that this aspect of the appeal would not have a reasonable prospect of success if it proceeded to the Editorial Standards Committee.

Turning to the complainant's concern about the use of Ewan Crawford as an interviewee representing the position of the pro-independence SNP, the Head of Editorial Standards noted that the fact that he had appeared on many occasions was not in itself grounds for entertaining a complaint: the issue would be how he was represented when being broadcast, and then what was broadcast.

She noted that the complainant had not sought to suggest that there was any deception in how Mr Crawford was used: from the introductions and his contributions, his position on independence was clear – and given his relative prominence in Scottish political life since 2001, there was no surprise in that. The Head of Editorial Standards said that the Committee would need to be convinced that his broadcasts ran counter to the guidelines, and in her view there was no evidence to support such a contention.

The Head of Editorial Standards noted that the complainant had suggested Mr Crawford's appearance on occasions when the SNP itself was unwilling to provide a representative was the result of the BBC colluding with the party to avoid scrutiny and accountability. However, the Head of Editorial Standards noted that no person or organisation was obliged to participate in such programmes.

The Head of Editorial Standards noted that, on the occasions which the complainant cited, the fact that the invitation to take part had been declined was explained to the audience during the broadcast. In this eventuality the BBC was required to observe the guideline which says:

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. **(Fairness, Contributors Guideline 6.4.28 )**

The Head of Editorial Standards also noted the following guideline:

We should not automatically assume that contributors from other organisations (such as academics, journalists, researchers and representatives of charities) are unbiased and we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made. **(Impartiality 4.4.14)**

The Head of Editorial Standards believed that it was for the BBC to conclude when, under its impartiality obligations, a balancing contribution was required when debating issues – and for the audience to draw conclusions when an organisation declined to take part. In

the instances which the complainant mentioned, the invitation to Mr Crawford did not infringe any guideline and the Committee would need to be presented with evidence that this had resulted in a lack of fairness or impartiality. The Head of Editorial Standards therefore believed that there was no reasonable prospect of success for this aspect of the appeal.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He questioned whether Mr Crawford was the only academic in Scotland who could speak from a pro-independence point of view and wondered whether he had an unwritten arrangement with his former colleagues to guarantee appearances.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the Head of Editorial Standards' decision not to proceed with the appeal, and the complainant's letter asking the Committee to review the decision.

The Committee noted the points raised by the complainant in his challenge to the decision of the Head of Editorial Standards. The Committee noted the explanation provided by the BBC Executive regarding the use of Mr Crawford.

The Committee agreed that in order to have a reasonable prospect of success on appeal, it would need to be convinced that the broadcasts featuring Mr Crawford ran counter to the BBC's editorial guidelines.

The Committee noted that the Head of Public Policy had stated that Mr Crawford's previous employment with the BBC was not related to the decision for him to appear in BBC Scotland's output. The Committee agreed that there had been no deception in how Mr Crawford was used by BBC Scotland and from the introductions and his contributions his position on independence was clear.

The Committee noted that the complainant's concern was about the number of times that Mr Crawford had been used in place of a representative of the SNP. The Committee noted that no person or organisation was obliged to participate in such programmes and that the BBC's responsibility was to ensure that the matter was covered fairly and with due impartiality. The Committee noted that on the occasions cited by the complainant, the fact that an invitation to take part had been declined by the SNP was explained to the audience during the broadcast. The Committee agreed that there was not sufficient evidence to support a complaint that the BBC's Editorial Guidelines had been breached by the broadcasts involving Mr Crawford.

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

## ***Frozen Planet, BBC One, 23 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 about a sequence in the programme showing the birth of polar bear cubs, which he suggested was misleading because it was filmed in a zoo and not in the wild. He said that, if the cubs were not filmed in the wild, it should have been made absolutely clear, since he understood the programme to be about the natural world.

In reply, BBC Audience Services explained that the cubs' birth was filmed in controlled conditions because it would have been impossible to film it inside a den in the wild without disturbing the female. The narration was carefully worded so it did not mislead viewers, talking about polar bears in the wild in general rather than the specific cubs shown. This type of filming was standard practice for natural history programmes. The BBC only ever used controlled conditions in extreme circumstances and all filming decisions were taken with careful consideration for the truth of the narrative.

On the question of informing viewers how the scene was filmed, audience feedback indicated that for natural history programmes on-screen explanations spoil the viewing experience for the majority. Information was therefore placed on the BBC website.

The complainant wrote again suggesting that, if such practices were standard practice in the industry, perhaps the BBC should be campaigning to change them. It was a matter of principle in his view.

Audience Services replied saying that a major survey a few years ago had produced an overwhelming response in favour of providing information either at the end of a programme or on a website.

The complainant wrote again reiterating that he felt cheated if he watched something purporting to be a natural history programme, only to learn later that some of it was filmed in artificial surroundings. He said the BBC had put profit before principle.

#### **Stage 2**

The complainant then wrote to the Editorial Complaints Unit, which considered the complaint in relation to the BBC Editorial Guidelines on Accuracy.

The ECU pointed out that the guidelines allowed for a programme to be edited provided viewers were not materially misled about the reality of the narrative and events; and specifically allowed captive animals to be used if it was impractical, unsafe or dangerous to film certain behaviour in the wild. In the case of *Frozen Planet*, the only way the life cycle of the polar bear could be portrayed was to film in a zoo. So as not to mislead viewers, the script was careful to talk in general terms about the mothers and cubs when showing the zoo footage.

The ECU said that it did not believe viewers who assumed the cubs were born in the wild would have been given a misleading impression since the sequence filmed in the zoo showed what would have happened in the wild if the programme had been able to film



there. Also, the script was worded in such a way that references to the mother and cubs were generic rather than specific when the zoo footage was used. The ECU accepted that viewers may simply have assumed the cubs had been born in the wild but the script did not say that and therefore did not breach the guidelines.

The ECU added that a five minute film was posted on the programme's website on the day it was transmitted explaining how the sequence was filmed. While not all viewers may have seen this, the film went some way towards providing information for those who wanted it.

The ECU concluded that *Frozen Planet* did not materially mislead viewers, even if viewers assumed the cubs were born in the wild.

The complainant wrote again arguing that truth and accuracy were important, and the commentator should have made it clear at the time the sequence was being broadcast that the cubs were in a zoo. He rejected the ECU's justification for the way the sequence had been filmed and said that the fact that information was posted on the website was irrelevant since most viewers would not have seen it and those that did would most likely have logged in after transmission rather than before.

### **Appeal to the BBC Trust**

The complainant escalated his appeal to the BBC Trust.

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 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 Head of Editorial Standards found the reasons given by the ECU for deciding not to uphold the complaint persuasive. While she accepted the importance of truth and accuracy in wildlife programmes, the question was whether the sequence showing the cubs' birth was materially misleading. The narration which accompanied this sequence was deliberately kept general so as not to make it appear that it featured a specific female which had been shown in the wild and the information given on the website made it clear how the scene had been captured.

The Head of Editorial Standards was clear that this was an exceptional situation where the sequence was particularly important to the story being told and could not be achieved in any other way. The zoo footage did not in any way distort the truth about the life of polar bears in the wild. On the contrary, it added to the audience's understanding of this.

The Head of Editorial Standards accepted that it would have been feasible to inform viewers about the method of filming as the sequence was broadcast but there was reliable evidence that this was not what most viewers wanted and the use of the website showed that there was no intention to mislead.

For these reasons the Head of Editorial Standards did not believe that 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 made the following points:

- *Frozen Planet* was not in the business of telling stories, that was for entertainment to do
- *Frozen Planet* was in the business of recording events in the natural world, not a distorted view of reality
- It was misleading not to say clearly at the time of broadcasting that the scene was artificial
- As broadcast, the footage distorted the truth and did not add to his understanding of natural events
- The BBC should be about presenting the truth about the natural world, not a cosy story

### **The Committee's decision**

The Committee was provided with the Senior Editorial Strategy Adviser's letter setting out the Head of Editorial Standards' decision not to take the appeal and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted that the complainant felt that *Frozen Planet* should not be "telling stories" but should be recording events that occur in the natural world. The Committee also noted his view that including footage recorded in a zoo presented a distorted view of reality that did not add to his understanding of natural events. The Committee considered that in using the term "telling a story" the Head of Editorial Standards was referring to a narrative portrayal of the life cycle of polar bears. The Committee noted the ECU's response which pointed out that the BBC's Editorial Guidelines allowed for captive animals to be used if it was impractical, unsafe or dangerous to film certain behaviour in the wild. The Committee also noted that the ECU's response made clear that the only way for some aspects in the life cycle of a polar bear to be filmed, was to do so in a zoo. The Committee agreed with the view shared by the ECU and Head of Editorial Standards that the zoo footage did not in any way distort the truth about the life of polar bears in the wild as the sequence filmed in the zoo accurately showed what would have happened in the wild if the programme had been able to film there.

The Committee noted that the complainant felt it was misleading not to say clearly at the time of broadcasting that the scene was artificial. The Committee also noted the Head of Editorial Standards' response which considered whether the sequence showing the cubs' birth was materially misleading. The Committee agreed with the Head of Editorial Standards' comments that, as the narration which accompanied the sequence was kept general so as not to make it appear that it featured a specific female which had been shown in the wild, it was not materially misleading as it accurately portrayed the birth of polar bear cubs. The Committee also noted that, while both the ECU and the Head of Editorial Standards acknowledged that it would have been feasible to inform viewers about the method of filming, there is reliable evidence that this is not what most viewers want and that the use of the website made clear that there was no intention to mislead or deceive.

The Committee agreed with the Head of Editorial Standards' view that the audience was not materially misled about the reality of the narrative and events of a polar bear's life cycle. The Committee did not therefore consider that there was a reasonable prospect of success for this appeal on the grounds that the BBC's Editorial Guidelines on accuracy had been breached.

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

## ***Sunday, BBC Radio 4, 13 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 said that Canon Giles Fraser, who presented an audio diary in the above programme, was wrong to state that he was going to Israel, given that he visited East Jerusalem and Bethlehem. He should have said that he was going to the Palestinian territories, and not to do so was misleading. The complainant also argued that reasons should have been given for the "tensions" which Canon Fraser said he felt.

In reply, the Series Producer said that Canon Fraser spent the majority of his trip in Israel and did not refer to going to Palestine because at present there was no such state. This was not a detailed examination of the Middle East situation and therefore Giles Fraser did not need to explain the reasons for the "tensions" he felt.

#### **Stage 2**

The complaint was also considered by the ECU which said that it would be incorrect to suggest a visit to either Bethlehem or East Jerusalem was "going to Israel". However, the ECU concluded that this was not what was said, it was only implied. The only point at which Israel was referred to was when Canon Fraser was in the departure lounge about to board a plane to Tel Aviv and was literally going to Israel. Elsewhere, his destinations were referred to by name, for example East Jerusalem or Bethlehem, or with the religious reference of the Holy Land.

The ECU agreed that it would not be correct to say that a visit to either Bethlehem or East Jerusalem would be "a visit to Israel", but did not agree that this amounted to a material inaccuracy.

The ECU ratified the view of the Series Producer that there was no obligation to go into greater detail on the reasons for the tensions in a programme of this nature.

The ECU therefore did not uphold the complaint.

### **Appeal to the BBC Trust**

The complainant escalated her appeal to the BBC Trust, reiterating the points made at previous stages and adding that, because the web page for the programme also referred to Canon Fraser's "trip to Israel", it was not a fleeting reference, but a permanent record of misinformation. The complainant rejected the argument that, because listeners to a religious affairs programme would not have expected information on the political and geographical realities, the content was acceptable. She said that they would not be expecting significant geographical or political realities to be presented inaccurately and certainly not ones which conflicted with international law. She also said that this misinformation, which was more subtle because of the nature of the programme, was probably even more powerful in influencing listeners' attitudes.

The complainant said that, as there was no access to the West Bank which was not under Israel's control, stating that Canon Fraser was "going to Israel" because he landed at Ben Gurion airport did not justify the statement.

The complainant also took issue with the Series Producer's claim that Giles Fraser spent the majority of his time in Israel, which she said was clearly untrue.

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 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.

In reaching her decision the Head of Editorial Standards had considered the Editorial Guidelines on Accuracy and Impartiality – Personal View Content.

The Head of Editorial Standards shared the ECU's view that it would be inaccurate to state that either Bethlehem or East Jerusalem were in Israel. While she accepted that if the phrase were taken in isolation, a listener might conclude that was what Giles Fraser was suggesting, context was key. She noted this was a six minute item, each segment of which was clearly recorded contemporaneously. At the point where Canon Fraser referred to "going to Israel" he was in the departure lounge at Luton Airport about to step on a plane which was going to take him to Tel Aviv. Once in Israel, he did not then specifically highlight the point in his audio diary when he left Israel and stepped into the occupied territories. The Head of Editorial Standards believed that he was under no obligation to do this. It was clearly stated at various points that Canon Fraser's destination was "the Holy Land". While that may not have any political meaning, the Head of Editorial Standards believed it was appropriate in this context.

The item was in a religious affairs programme which had been running for more than 20 years. As explained by the ECU, it was clearly signposted in Ed Stourton's introduction and throughout the dispatch as a personal pilgrimage back to the source of Canon Fraser's faith. The Head of Editorial Standards noted that contributors of personal view content within BBC output, so long as it was clearly signposted, were under no obligation to include or exclude any specific material. The item was not part of news or current affairs output and it did not promise to offer any opinion on the current political situation. The audience would have been expecting an item about faith and that is what was delivered. The entire six minute piece was a spiritual journey as much as a physical one and while Canon Fraser could have chosen to mention some of the issues which the complainant raised, the Head of Editorial Standards did not agree that there was any requirement for him to do so. He made passing references to picking up on tensions, and referred at one point to Palestinian children playing with replica machine guns but he used the examples in the context of his personal pilgrimage.

The editorial guidelines on impartiality state that the BBC has editorial freedom to broadcast content about any subject at any point on the spectrum of debate. The Head of Editorial Standards could see no evidence that omitting to mention additional contemporary context misled listeners in any way or resulted in a bias of views.

The Head of Editorial Standards considered the requirement of the Impartiality guideline that in personal view content the BBC should retain a respect for factual accuracy. In her view Canon Fraser's reference to "going to Israel" was capable of being interpreted as being his next destination, because of the point in his diary when he stated it. It would have been entirely different if, during the journey, once he had established he was in Bethlehem or East Jerusalem, he had referred to being in Israel but he only mentioned the word "Israel" once, and that is when he was at Luton Airport.

The Head of Editorial Standards noted the complainant's concern about the way in which the item was introduced on the web page but stated that she believed the ESC would consider this to be a listing, not a comprehensive summary of the item. The intention of the "Listen Now" page was to get the reader to click on the link and listen to the item. It was not a destination in itself.

Regarding the complainant's comment that the Series Producer was wrong to claim that Giles Fraser spent the majority of the time in Israel, the Head of Editorial Standards did not think it was possible to ascertain from the item whether or not that was the case. In any event, her decision not to proceed to appeal did not rely on the amount of time Canon Fraser spent in Israel, and it would therefore be disproportionate for the ESC to hear an appeal purely on whether a response at Stage 1 was wholly accurate.

In conclusion, the Head of Editorial Standards decided that the complaint had no reasonable prospect of success and should not proceed to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. She said that Canon Fraser may have been travelling to Tel Aviv but he made it clear in the item that he was travelling on to Bethlehem which implied that he regarded Bethlehem as being in Israel. This was in breach of the guidelines. The complainant also did not agree that the web page entry should be regarded as just a listing. It appeared to be a title. The podcast site also contained a description of the item which referred to "Canon Giles Fraser on his trip this week to Israel...". Finally, the complainant said that it was clear from the item that the majority of Canon Fraser's time was not spent in Israel and that he merely passed through Israel en route to the occupied territories.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the Head of Editorial Standards' decision, and the complainant's letter asking the Committee to review the decision.

The Committee noted the complainant's concern that it was inaccurate for Canon Giles Fraser to say he was "going to Israel" when he then visited Bethlehem and East Jerusalem. The Committee also noted the ECU and Head of Editorial Standards' responses which clarified that the only mention of Israel in the programme was whilst Canon Fraser was in the departure lounge at Luton airport before boarding a flight to Tel Aviv, and therefore was literally going to Israel. The Committee noted that elsewhere in the programme his destinations were referred to by name or with the religious reference of the Holy Land.

The Committee also noted the complainant's comments on appeal that the web page for the programme and the podcast site also referred to Canon Fraser's "trip to Israel" and that this represented a permanent record of misinformation. The Committee agreed with the Head of Editorial Standards' response which outlined that the web page content should be considered a listing, not a title or comprehensive summary of the item and was

intended to guide readers to the link to listen to the item – it was not a destination in itself.

The Committee noted the complainant's view that, when Canon Fraser referred to "tensions", further contextual explanations and reasons for the tensions should have been given. The Committee concurred with the ECU and the Head of Editorial Standards' view that as the item was a religious affairs programme, which was clearly signposted as a personal pilgrimage to the source of Canon Fraser's faith, there was no requirement to include or exclude any specific material on the current political situation. The Committee noted the Head of Editorial Standards' view that there was no evidence that omitting to mention additional contemporary context misled listeners in any way or resulted in a bias of views.

The Committee also noted the complainant's contention that the Series Producer was wrong to claim that Canon Fraser spent the majority of the time in Israel. The Committee agreed that, as the Head of Editorial Standards' decision not to proceed with the appeal did not rely on the amount of time Canon Fraser spent in Israel, it would be disproportionate for the Committee to hear an appeal purely on the basis of whether the Stage 1 response was wholly accurate.

The Committee agreed that although Canon Fraser did not specifically highlight the point in his audio diary when he left Israel and stepped into the occupied territories, he was under no obligation to do so. The Committee agreed that the one reference to going to Israel in the programme was accurate and, in the context of an item about faith, the subsequent references to "the Holy Land" were entirely appropriate. The Committee did not consider that there was a reasonable prospect of success for this appeal on the grounds that the BBC's Editorial Guidelines had been breached.

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

## ***News at Six, BBC One and BBC News Channel, 8 December 2011***

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

### **The complaint**

#### **Stage 1**

The complainant wrote to the BBC to complain that a large Scottish flag had featured as a backdrop to an interview with a Scottish government minister. He said *Channel 4 News* had carried a similar interview but had used a blue curtain rather than a flag. The complainant said that this was evidence of what he described as the BBC's racist policy in favour of Scotland. He referred, in particular, to an employment case which he said the BBC had lost some years before.

In reply, BBC Audience Services said that the interview had been conducted in front of a video screen with the flag on it, following a press conference by the Scottish Government on the recent storms. They could make no comment on Channel 4's coverage and could not understand why the complainant considered the visibility of the flag to be evidence of racism. They said it was simply an image in the background of an interview, taking place in the country which used that particular flag. The BBC refuted any allegations of racism in its employment practices.

The complainant wrote again, saying that the BBC was misapplying public funds to promote Scottish nationalism. If the BBC did not stop this, he would start a campaign to limit the amount the BBC spent in Scotland to the same proportion of revenue it collected in Scotland.

BBC Audience Services replied that the footage of the flag had been very brief and the issue at hand had been the weather, rather than politics. The Scottish Government had issued weather warnings and so it had been appropriate to interview the minister. They did not agree that there had been any racism.

#### **Stage 2**

The complainant then wrote to the ECU, saying that the BBC, in a deliberate political act, had digitally manipulated the background to the interview, substituting a Scottish flag for the original blue background. His evidence was the comparison with the Channel 4 coverage. He said this manipulation had been an abuse of public office and public funds, and the failure to explain why the change of background had been made proved that the BBC was untrustworthy and unfit to hold a broadcasting licence.

The ECU replied that it could not see how the image of the flag could be seen as encouraging or endorsing a pro-Scottish view or in any other way compromising the BBC's editorial standards regarding impartiality. It therefore did not uphold the complaint.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, reiterating that he had clear evidence that the BBC had superimposed a Scottish flag on the interview. He had



recorded both BBC and Channel 4 versions and these had been the same apart from the backgrounds.

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

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

The Head of Editorial Standards noted that the relevant BBC Editorial Guidelines were those on Impartiality, in particular:

"The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects..." (4.1 Introduction)

The Scottish flag was shown for approximately 10 seconds as the background in an interview with the Deputy First Minister of Scotland. It was a matter of fact that the Scottish flag that was shown was an official national flag of the UK. The Head of Editorial Standards had not seen any evidence to suggest that using the relevant official, national flag when interviewing the Deputy First Minister of Scotland about the consequences of Scotland's severe weather, was in any way an indication of racism or bias. Another channel's TV report may well have used a different background but the Head of Editorial Standards believed this – and the precise circumstances leading to the difference – would be likely to be viewed as irrelevant in this case by Trustees.

For these reasons, the Head of Editorial Standards did not think 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 expressed his discontent with the Head of Editorial Standards' decision and said this was why "complaints against the BBC must be taken away from the BBC". The complainant repeated his allegation that the BBC had manipulated the footage and said that the report was shown repeatedly on the rolling news channel.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the decision of the Head of Editorial Standards not to proceed with the appeal, and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the report in question.

The Committee noted that the image of the flag behind the Deputy First Minister appeared as a moving image on a video screen which was flanked by the blue curtain to which the complainant had referred.

The Committee agreed that, whether or not the BBC had manipulated the background image, which it found unlikely, the use of a Scottish flag behind a Scottish Minister talking about the devastating effects of a storm in Scotland was not likely to be considered a breach of the Impartiality guidelines. The Committee agreed that there was not a reasonable prospect of success for this appeal.

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

## ***The Film Programme, BBC Radio 4, 15 December 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 complaining about the use of the word "wank" in a programme which was broadcast on BBC Radio 4 at 4pm. He said that this was inappropriate because children were likely to be listening at this time, either in the car or at home.

In reply, BBC Audience Services explained that decisions on programme content were based on audience expectations. They said that audience research shows that very few children and young people listen to Radio 4. The reply said that the BBC was aware that opinions differed on what was or was not acceptable language and that guidelines were issued to programme makers in order to minimise the risk of offence. Programmes of adult interest were broadcast at times convenient for a general audience and, taking into account the likely audience, the BBC tried not to impose unnecessary restrictions.

The complainant wrote again saying that, in his view, children would be exposed to this broadcast at this time of day.

Audience Services responded after forwarding the complaint to the Executive Producer of the programme. The Executive Producer felt that, because Radio 4 was a predominantly adult station, most listeners would accept the occasional use of strong language or sexual reference, if the programme required it. *The Film Programme* reviewed mainstream films that covered every aspect of life. The film in question, *Tyrannosaur*, was an acclaimed film with award-winning performances from popular actors. The film clip used in the programme gave the audience useful context and a sense of the film under discussion. The Executive Producer apologised for the offence caused and explained that great care was taken over the editorial implications of programme content.

#### **Stage 2**

The complainant wrote to the Editorial Complaints Unit (ECU). He raised the following points:

- While Radio 4 was an adult station, many adults would be parents driving children of all ages after school at 4pm.
- Listeners would not expect the word "wank" to be used at this time of the afternoon.
- It was an editorial choice to broadcast this clip, but there seemed to be no redeeming artistic merit in using it.

The ECU considered the complaint in relation to the Editorial Guidelines on Harm and Offence.

The ECU set out in detail the context of the interview with the actor Eddie Marsan, which was about his role in the film *Tyrannosaur*. Francine Stock, the presenter, explained the nature of his role as an abusive husband, giving an indication of the adult nature of the

film. After Mr Marsan explained how a character actor had to make an instant impact with the audience, a clip from the film was used to illustrate this point as well as giving a flavour of the film. At the end of the clip, the word "wank" was used in a sexual context.

Given the nature of the interview, the ECU felt that there was appropriate editorial justification for including this clip. The ECU took into account the following:

- Radio 4 was a speech-based station predominantly aimed at an adult audience. Regular listeners, including those with children, would be likely to expect more adult-orientated themes and content.
- The build-up to the clip would have alerted those listening with children to the more adult nature of the content. Mr Marsan played a threatening character who physically abused his wife.
- Although "wank" was a word considered offensive by some when judged against generally accepted standards, its use could be acceptable in certain contexts.
- The average age of listeners to *The Film Programme* was around 58, according to the most recent RAJAR figures.

### **Appeal to BBC Trust**

The complainant escalated his complaint to the BBC Trust. He made the following arguments:

- Although Radio 4 may be aimed at an adult audience, there was no audience figure for those listening below 15 years of age.
- At 4.30pm many children would be in cars driven by adults and they would be exposed to this language.
- If the word "wank" was used on Radio 1 or Radio 2, there would be an outcry.
- Radio 4 was meant to have higher intellectual content, but this word was part of a tawdry scene broadcast at the wrong time and was totally avoidable.
- No warning or clues were given before the scene was broadcast, either by the presenter or continuity announcer.
- The context of the character as unpleasant did not excuse the inappropriate choice of clip.
- The actor's justification for including the clip was irrelevant as it was the BBC editor's choice to broadcast it.

Overall, the complainant felt that his complaint had not been objectively assessed.

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 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.

Having reviewed the correspondence and transcript of the programme, the Head of Editorial Standards concluded that the ECU had carried out a thorough review of the complaint and felt sure the Trustees would agree with its findings.

While she understood the complainant's concern that children may inadvertently be listening to Radio 4 because their parents had chosen to tune into this, the Head of Editorial Standards believed that most Radio 4 listeners were aware of the nature of *The Film Programme*. This had been on air since 2004 and regularly reviewed films for an adult audience, many of them with an 18-rated certificate. On this basis, parents and carers would be able to make an informed judgement of whether or not this was a suitable programme for their children to listen to.

The Head of Editorial Standards also understood that the complainant felt there was little editorial justification for the inclusion of the clip. She explained that, when considering the use of strong language, the Trust was aware that most viewers were offended if it was used gratuitously or without editorial purpose. Programme makers were required to make an editorial judgement complying with the guidelines which state:

"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."

Therefore challenging material was not automatically barred from daytime broadcasts. In this particular case, Francine Stock was interviewing a well-known actor, Eddie Marsan, about a new release which was receiving wide publicity and had gone on to win awards. It was an 18-rated film and the subject matter was about domestic violence and abuse. The clip chosen reflected this content. The interview before the clip gave some warning about adult content. Although individual listeners may not necessarily agree with the editorial judgement of the producers on this occasion, the Head of Editorial Standards did not believe most listeners would have been surprised or offended by the clip, given the established reputation of the programme.

The Head of Editorial Standards said it was also important to bear in mind that radio scheduling differed from television. There was no 9pm watershed on radio. This reflected the fact that some radio stations, such as Radio 4, attracted very few children. The output was aimed firmly at an adult audience and would be unlikely to engage a child's attention.

The Head of Editorial Standards said that the likely audience was central to considering audience expectations. As well as the time of day, the guidelines pointed out that the nature of the service and content were two important factors in determining the suitability of programme material. This did not mean that potentially offensive material may be broadcast at any time of day, but it did take into account that regular listeners were familiar with established series and would expect more challenging content than programmes catering to a wide-ranging audience, including children.

On this occasion, the Head of Editorial Standards did not believe that Trustees would agree that use of the word "wank" at this time of day in a well-established programme on Radio 4, dealing with a wide variety of films including 18-rated films, would offend the majority of listeners.

For these reasons, the Head of Editorial Standards did not believe there was a reasonable prospect of success in referring the appeal to the Editorial Standards Committee.

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

relatively impartial body whereas the Head of Editorial Standards, as a member of the BBC's staff, suffered in his view from a conflict of interests.

### **The Committee's decision**

The Committee was provided with the letter 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 item in question.

The Committee noted the complainant's view that the Trust's Head of Editorial Standards was conflicted in making her decision not to accept the appeal for consideration by the Trust. The Committee was mindful that it was part of the Head of Editorial Standards' role to decide whether appeals to the Trust met the criteria for being taken by the Committee. The Committee wished to clarify to the complainant that the Head of Editorial Standards plays no part in the day-to-day editorial decisions of the BBC and was therefore unconnected to any decision regarding the content of the programme in question. The Committee also noted that the complainant was under the misapprehension that the Head of Editorial Standards was involved in the responses to the complaint at its earlier stages. The Committee also wished to clarify that the Trust's Head of Editorial Standards only becomes involved in complaints once they have reached Stage 3 of the process; that is, once the BBC Executive's decision is appealed against. As such, the Committee considered that there was no merit to the complainant's allegation that consideration of the admissibility of the complaint by the Head of Editorial Standards was unfair.

The Committee noted the complainant's strongly held view that the language used in this case was inappropriate. The Committee noted the explanation provided by the BBC Executive with regard to the context of the programme and the likely audience. The Committee also noted the reasoning of the Head of Editorial Standards that, given audience expectations and the subject matter of this discussion, the use of the word "wank" would be unlikely to offend the majority of listeners.

The Committee noted the established audience expectation for Radio 4's *Film Programme*, the context of the interview with Mr Marsan and the fact that listeners would have been in a position to make an informed choice about whether the programme was appropriate for children. Taking this into account, the Committee agreed that the appeal did not have a reasonable prospect of success.

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

## ***Wales Today*, BBC Wales, 12 March 2009**

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 said that a *Wales Today* report of 12 March 2009 by Nick Palit on the legacy of the miners' strike was biased and inaccurate.

In correspondence, the complainant requested the reporter's father's personal data, including information on:

- his job at a colliery; and
- whether he was a representative or official in the National Union of Mineworkers (NUM).

This request was rejected, as BBC Audience Services considered the information to be immaterial to what had been broadcast. Furthermore, the Public Policy and Strategy Adviser, BBC Cymru Wales, took the view that the data in question fell within the exemption afforded to the BBC by Part VI of Schedule 1 to the Freedom of Information Act 2000, and that, as the reporter's father was not related to the complainant personally, under the terms of the Data Protection Act 1998 he had no right of access to the information.

With regard to the editorial complaint, BBC Audience Services wholly disagreed with the complainant's analysis. The BBC took the view that the subject was treated in a fair and even-handed way, and that the programme was well sourced, based on sound evidence and presented in clear, precise language.

#### **Stage 2**

The complainant wrote to the ECU and an ECU Complaints Director considered the complaint in relation to the Editorial Guidelines on Impartiality and Accuracy.

The Complaints Director explained that exploring events from a particular perspective did not automatically put a programme in breach of the guidelines.

In considering the legacy – as distinct from the causes – of the miners' strike, the programme made no claims about the decisions of the National Coal Board and the then government in relation to disputed matters such as pit closures and job losses, and the programme was not automatically biased in having looked at issues from the miners' perspective.

With reference to the implications of the photograph used as backdrop in the studio (which the complainant said showed a police officer holding a miner around the neck), the ECU took the view that it would have been unclear to viewers precisely what was happening in the image. The ECU therefore did not believe that viewers would have interpreted the backdrop photograph as suggesting that violence had been perpetrated by police on striking miners in Wales. Even if viewers had understood the image to be showing a physical confrontation between police and striking miners, it did not necessarily



follow that they would have concluded that the policeman in the picture was acting inappropriately or using excessive force. Similarly, the ECU did not believe that footage of striking miners grappling with police suggested that the police action shown was excessive or unwarranted, or attributed greater blame to the police than the miners, or that viewers would have received such an impression.

The ECU disagreed with the contention that the programme made light of the death of taxi driver David Wilkie and the actions of his killers. The ECU did not consider that viewers would have regarded the programme's use of the word "tragedy" as attempting to downplay his death or exonerate his killers, and did not therefore believe that the description of his death was biased or inaccurate. Nor did the ECU consider that the respective phrasing of the descriptions of Mr Wilkie's death and the actions of the police implied any criticism of police conduct.

The ECU did not believe that the inclusion of an interviewee miner's reference to Mrs Thatcher's phrase "the enemy within" made the report unbalanced, biased or unfair to Mrs Thatcher, as the complainant had alleged. The comment was presented as the opinion of one miner, not as objective fact, and audiences would have regarded it as such.

With reference to the omission of discussion of Cwm coking plant, which the complainant said rendered this section biased, the ECU did not agree that the section of the programme in which this was mentioned was critical of Mrs Thatcher or her government's decisions. It did not therefore believe that the programme presented an unbalanced view of the decision to close Cwm colliery and that it would have been necessary for reasons of balance to discuss the coking plant.

The ECU disagreed with the contention that the programme's reference to Tower colliery having "only" survived so long because of a miners' buyout implied that there was no other way in which the colliery could have survived. In context, the word "only" referred to what had happened, rather than what might have happened; it was a fact that the mine had remained open as long as it had done because of the buyout. This programme was therefore duly accurate in this regard.

With regard to the reporter's comments on Parc Nantgarw, the ECU could not agree that the report was biased or unfair, or that it gave an inaccurate impression of the site. The ECU took the reporter to be referring to the fact that, for his family, it was no longer a place of work but of play. The report included references that would have served to ensure that viewers were not misled into thinking that there was no employment in Nantgarw. The ECU took Dr Howells' comments to be suggesting that the success of Parc Nantgarw belied the myth that former coal-mining areas were not prosperous. The ECU did not agree that, in not spending more time on the businesses at Parc Nantgarw, the programme had given an inaccurate impression. With reference to the report's depiction of the Makro building, the ECU did not believe that viewers would have been misled into inferring from a single shot that the building was small.

In the ECU's view, the commentary to Nick Palit's report made it clear that the decimation of the community on closure of the pit was a fear that miners held. Viewers would not have understood the destruction of Nantgarw to have resulted from the pit's closure, but only that miners feared that it might. The report was therefore duly accurate in this regard.

The ECU did not believe that it was necessary for reasons of balance or accuracy for Neil Kinnock to have been asked the questions which the complainant suggested, particularly

about the conduct of Dr Kim Howells MP. In the ECU's view, the interview did not mislead viewers by omitting such questions.

In the ECU's view, it was not necessary for reasons of balance or accuracy that the report should have included the detail which the complainant noted concerning Dr Howells' past conduct. Nor was the programme biased for having omitted to challenge him on these points. The subject of the interview with Dr Howells was Nantgarw today and his perspective on the events of 25 years ago, and it was reasonable for the interview to have restricted itself to the points under discussion.

The Complaints Director concluded by notifying the complainant of his right to appeal to the ESC and of the Trust's requirement that his appeal be received within four weeks of the date of the ECU's decision.

During the course of the correspondence that followed the ECU's decision, the complainant sought to elicit details of the backdrop photograph from both the ECU and BBC Cymru Wales. He also requested information on the provenance of footage of the elevated view of a colliery which, in his view, was purported to be of Cwm colliery but which, on the basis of personal knowledge, he knew was not.

In subsequent correspondence the Complaints Director reminded the complainant of his right to appeal to the ESC on five further occasions. In two of these communications the Complaints Director also reminded him of the 20-working-day time limit for appealing to the ESC. The time limit was also mentioned in two further letters.

The Head of Strategy and Communications, BBC Cymru Wales, asked the complainant several times why he had not proceeded to appeal to the Trust. He also reminded the complainant in two letters that he could appeal to the Editorial Standards Committee of the BBC Trust.

The complainant was also informed orally by the Public Policy and Strategy Adviser, BBC Cymru Wales, that he should address his complaint to the Trust.

## **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust. He acknowledged that part of the reason for the delay in bringing the appeal was deliberate, but contended that other factors were beyond his control:

- He was currently bringing three complaints to the Trust, which generated a considerable amount of paperwork.
- He did not believe that an organisation like the Trust should fetter a complainant by refusing to make any allowance for the burden of bringing multiple complaints.
- The provenance of the backdrop photograph was material to the appeal.
- Because he anticipated that the Trust would be "just as difficult to deal with as the ECU", he had instead approached BBC Wales on this matter, from which protracted correspondence had ensued.
- He had also been in correspondence with BBC Wales in respect of another matter.
- He had also written to Lord Patten during this time.
- His wife had sustained an injury which had caused serious disruption, especially over Christmas and New Year.

The complainant set out the elements of the complaint which he considered had not been answered.

The complainant asked the Trust to look at all of the contributors to the programme, to say whether the programme was fair and balanced, and to consider whether points of views from other sources, not necessarily Conservative, would have presented the police and Mrs Thatcher in a better light.

In reply, the Head of Editorial Standards explained that her role included considering whether the complainant and the Executive had complied with the editorial complaints and appeals procedures. Whereas the time limit for appeal was normally 20 working days from the date of the final Stage 2 response, almost 19 months had elapsed between the ECU's decision and this appeal, and over 11 months between the ECU's final response and the appeal. The appeal was therefore well outside the time limit.

The question therefore arose whether there was a good reason for the delay. It appeared from the correspondence that, on at least ten occasions the complainant had been informed of his right to appeal to the Trust and on at least three the complainant had been expressly informed of the time limit. The Head of Editorial Standards also noted that on at least two additional occasions the requirement that an appeal to the Trust be made within a reasonable time had been mentioned. She went on to say that as an experienced complainant who had brought a number of complaints against the BBC, it was reasonable to infer that he was well acquainted with the requirements of the complaints process, including the time limit. In fact, it was clear from comments made by the complainant in correspondence that he was well aware of the time limit and had made an informed decision not to comply.

The question then arose whether the complainant had good reason for doing so. The Head of Editorial Standards noted the reasons cited by the complainant, but did not believe they amounted to a reasonable justification. The fact that he was currently bringing several complaints against the BBC, which generated a considerable amount of paperwork, was, in her view, immaterial. This was a burden that the complainant had assumed voluntarily and did not entitle him to exceptional treatment. Similarly, she did not consider that his correspondence with BBC Wales in respect of another matter and with Lord Patten was a material consideration. The volume of his correspondence with the BBC was a matter that was within his control, and to take this into consideration would be unfair to other complainants who abided by the editorial complaints and appeals procedures despite their other commitments. Furthermore, she did not agree that by not treating the plurality of his complaints as an exceptional matter, the Trust would be fettering his right to appeal to the ESC.

While the Head of Editorial Standards accepted that the complainant believed that the details of the backdrop photograph and colliery footage were material to the appeal, she did not agree that they were crucial or that the appeal could not have been brought without them. If the complainant had brought a timely appeal and the ESC had agreed with his estimation of the importance of these details, the ESC could have initiated its own investigation. The complainant had pre-empted this possibility by persevering with his attempts to obtain information directly from the Executive, despite being repeatedly informed of his right to appeal to the Trust.

The editorial complaints and appeals procedures applied to both the BBC and complainants alike. They did not permit either party to knowingly disregard the rules for what it considered to be its own advantage.

As the complainant had acknowledged, one reason why he refrained from appealing to the ESC was because he had decided that he could pursue his complaint more effectively by approaching the Executive directly. Even though this course of action was motivated

by the complainant's lack of confidence in the Trust, the informed decision not to comply with the editorial complaints and appeals procedures did not entitle the complainant to rely on such conduct in mitigation of the delay.

The Head of Editorial Standards said that she was sorry to learn of the complainant's wife's injuries and the disruption they had caused. Nevertheless, she did not consider that this was a material cause of, or had a significant impact on, the very considerable delay in bringing the appeal.

Because the appeal was brought just under 19 months after the ECU's decision and over 11 months after its final response, and because she did not consider that there were good reasons that would justify the ESC exceptionally hearing the complaint, the Head of Editorial Standards did not believe the appeal had a reasonable prospect of success, and therefore did not propose to proceed in putting 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 primary reason for the decision was that the Head of Editorial Standards felt that the complaint did not raise a matter of substance. However, no evidence had been given for this. He also accused her of incompetence and bias. As regards being outside the time limit, the complainant argued that this was not a reason for deciding not to put the appeal to the ESC. What mattered was whether the complaint had substance.

The complainant went on to justify the delay, pointing out that some of the letters which referred to the appeal process contained defects which the complainant needed to follow up and it was necessary to seek details of the backdrop photograph because this was material to the appeal. Other factors that the complainant believed the ESC should consider included a review of his complaints ordered by the Head of BBC Wales in July 2011, which had taken over four and a half months to complete, and that a considerable amount of his time was taken up with complaints because the BBC insisted on broadcasting what he described as offensive, anti-Thatcher programmes.

The complainant also said that his final reply from the BBC Executive at Stage 2 was in fact after the date taken by the Head of Editorial Standards as the end of his Stage 2 correspondence.

### **The Committee's decision**

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

The Committee noted that the final reply from BBC Wales had been dated 28 November 2011, whereas the complainant had not made his request for an appeal to the Trust until 3 February 2012.

The Committee noted that the complainant was familiar with the BBC's complaint process and had been advised of the option to appeal to the Trust, and the relevant time limits, on multiple occasions. The Committee noted that the complainant had referred to delays in the handling of the appeal which were not of his making; however, it also noted that he had actively chosen not to appeal to the Trust within the time limits of which he was aware. The Committee noted that, if the Trust had considered the complaint to have substance, it would have conducted any necessary investigation as part of its handling of the appeal.

The Committee noted that any delay should be considered in light of the seriousness of the issues raised by the complainant. However, the Committee was satisfied that the complaint did not raise a matter of substance that would justify waiving the normal complaints and appeals procedure.

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

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

## ***News at Ten, BBC One, 14 December 2011***

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

### **The complaint**

#### **Stage 1**

The complainant wrote to the BBC regarding an item on *News at Ten*, which referred to a speech by President Obama welcoming home some of the last American soldiers from Iraq.

Correspondent Mark Mardell said:

"This speech is intended to draw a clear line underneath a war that divided America, and divided America from its allies. In one sense, President Obama's election was a reaction to that conflict, and his foreign policy has been driven by a desire to rehabilitate America in the eyes of the world. A war based on a false premise that Saddam Hussein had weapons of mass destruction began with Shock and Awe and what looked like an easy victory. But the occupation was ill thought-out and descended into a turmoil of violence."

The complainant said that, although the statement "a war based on a false premise that Saddam Hussein had weapons of mass destruction" was partly true, the precise reason for the war was the breach of UN resolution 1441 by Iraq. Mark Mardell's form of words called into question the validity of the war. The complainant said the statement was inaccurate and biased, and that it should have referred to the war being based on the defiance of UN resolutions. The complainant referred to the BBC Editorial Guidelines on Accuracy which state that:

"If an issue is controversial ... all the relevant facts and information should also be weighed to get at the truth."

BBC Audience Services replied after contacting Mark Mardell. Mr Mardell said that, given that the war was not prosecuted on behalf of the UN but by individual countries, there was no legalistic formula setting out in formal terms why either the US or the UK went to war. Although there were a number of reasons, the most high profile, often used argument and the reason behind the UN resolution was the commonly held belief that Iraq was developing weapons of mass destruction.

#### **Stage 2**

The complainant then wrote to the ECU reiterating that the words used by Mr Mardell were in line with the anti-war version of the reason for going to war. He asked the ECU to consider three related points:

- That Mark Mardell's allusion to the cause of the Iraq war was biased as it implied that the war was based on a lie.
- Given what the Editorial Guidelines on Accuracy said about controversial subjects (quoted above), the form of wording used was only part of the explanation and

therefore did not meet the requirement that “all relevant facts and information” should be included.

- The word “false” in this context was not strictly accurate as it implied a deliberate distortion of the truth. The use of the word was ambiguous.

The ECU replied that, having seen Mark Mardell’s remark in context, it did not appear to be a statement about the cause or causes of the war. Rather the “false premise” point related to the account of why the war had been divisive, internationally as well as internally, and consequently why President Obama’s foreign policy had been driven by a desire to rehabilitate America. It was therefore not an inaccurate statement in itself to say that the war was based on Saddam’s supposed possession of weapons of mass destruction (whatever else it may have been based on) and that the supposition proved to be false.

The ECU said that the phrase might have fallen short of due accuracy in a way which gave rise to bias if it had implied deliberate distortion of the truth. The word “false” did have a meaning which implied deceit but, used as part of the phrase “false premise”, there was no implication of deceit. The ECU said also that, as there was no doubt that the premise was false, there was neither inaccuracy nor bias in the phrase. For this reason the ECU decided not to uphold the complaint.

The complainant wrote again saying that, in the context which the ECU described, there was an element of unacceptable ambiguity about whether “false” meant “untruthful” or “incorrect”. He gave an example from a blog which he said illustrated how the word “false”, when used in relation to the Iraq war, could be interpreted by those against the war to mean “lying”. He said this could have been avoided if the word “false” had been replaced with “mistaken”.

The ECU replied pointing out that “false pretext” was a phrase implying deliberate distortion whereas “false premise” was not.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust reiterating that use of the phrase “false premise” was inaccurate and biased, because the exact cause of the Iraq war was a breach of UN resolution 1441. He repeated his argument that Mark Mardell’s allusion to the cause of the war implied that the war was based on a lie. He said the context of Mr Mardell’s remark, which the ECU viewed as important because it demonstrated that his statement was not about the causes of the war but about why the war had been divisive, actually supported his complaint. This was because the ECU was suggesting that the “false premise” was responsible for the division of opinion on the war. He said the word “false” used in this context was ambiguous and could have been avoided by using a different phrase.

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 transcripts of the item in question and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust’s Editorial Standards Committee.



The Senior Editorial Strategy Adviser said that the Trust's Head of Editorial Standards noted that the guidelines on Accuracy state that:

"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... 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."

The guidelines on Impartiality state that:

"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."

Having reviewed the item in question and the correspondence, the Head of Editorial Standards did not believe that the Committee would agree that the accuracy of the phrase used by Mark Mardell was in question. She found persuasive the ECU's explanation that the accuracy of a statement that the war was based on Saddam's supposed possession of weapons of mass destruction (whatever else it may also have been based on) and that the supposition proved to be false was surely not in doubt. While the complainant stated that the exact cause of the Iraq war was a breach of UN resolution 1441, as the ECU explained, whatever else the basis of the war, the statement by Mr Mardell was not inaccurate in its own right.

The complainant also said that the context of Mark Mardell's remark supported his complaint that it was inaccurate and biased. However, the ECU pointed out that, while the belief (whether justified or not) that there had been deliberate distortion of the truth contributed to the division of opinion on the war, it was over-subtle to read an implication to that effect into the phrase "false premise". The Head of Editorial Standards agreed with the ECU that an acceptance that there had been a deliberate distortion of the truth was not implied by the phrase "false premise" and that, regardless of the context in which the phrase was used, the Committee would find no implication that a deliberate distortion of the truth actually took place. In the Head of Editorial Standards' view, the phrase therefore was not inaccurate, nor did it show bias.

On the issue of the word "false" itself, although it did have a meaning which implied deceit, the Head of Editorial Standards believed that, in this case when used as part of the phrase "false premise", there was no implication of deceit. Therefore as the premise was indeed false, the Head of Editorial Standards believed the Committee would agree with the ECU that there was neither inaccuracy nor bias in the phrase.

Given these points, the Head of Editorial Standards did not consider that 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 reiterated that the guidelines required that, on a controversial matter such as the cause of the Iraq war, all relevant facts and information should have been included. He continued to believe that use of the phrase "false premise" carried an implication of deceit and was at best ambiguous.

## **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 the phrase "false premise" did not automatically imply deceit, merely that the premise was wrong, and there was no implication that a deliberate distortion of the truth actually took place. The Committee agreed that there was no reasonable prospect of success for an appeal on the grounds that this statement was inaccurate.

The Committee noted that the complainant had referred to the part of the Accuracy guidelines dealing with controversial matters, in particular that:

"If an issue is controversial ... all the relevant facts and information should also be weighed to get at the truth."

The Committee noted the complainant's view that this guideline precludes the ambiguity which he alleged. The Committee considered that it was over-subtle to read into the phrase the ambiguity which the complainant did. The Committee agreed that, taking into account the report as a whole, there was no reasonable prospect of success for an appeal on the basis that there has been a breach of either the Accuracy or Impartiality guidelines.

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

## Newspaper article by Jeremy Paxman, 31 October 2011

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

### The complaint

#### Stage 1

The complainant wrote to the BBC to complain about an article in the *Daily Mail* by Jeremy Paxman concerning the legacy of the so-called "baby boom" generation, which contained a reference to Tony Blair as the "multimillionaire messiah". The complainant described this as biased and offensive, making the following points:

- To contrast "Clement Attlee, perhaps the greatest Prime Minister of the 20<sup>th</sup> century", with "Tony Blair, the multimillionaire Messiah" demonstrated clear bias against Mr Blair. This was a sneer containing connotations of delusion and hypocrisy.
- The bias was all the greater because it followed other remarks by Mr Paxman about Mr Blair, to which the complainant had drawn the BBC's attention.
- He questioned whether Mr Paxman had sought approval for the article from his head of department. If he had, then there was an even greater scandal because this would suggest a representative of the higher echelons of the BBC had sanctioned a biased and offensive reference to Mr Blair.
- This and other anti-Blair remarks called into question whether Mr Paxman should be taking a prominent role in interpreting the Iraq Inquiry's findings for the *Newsnight* audience and interviewing some of the key players.

BBC Audience Services replied after consulting the *Newsnight* editor. The following points were made:

- The context of the article made it clear that the contrast was between Mr Attlee's £7,000 legacy and Mr Blair's millions, rather than between a legacy of greatness and any implied opposite. It was a reference to the nature of the times we lived in – the subject of the article.
- The reference was in keeping with Mr Paxman's trenchant and humorous style. It was regretted that the complainant found the word "messiah" offensive and open to misinterpretation but it had been meant as a joke. While the teasing reference had clearly not worked for the complainant, no one else had complained and it was not considered there was any suggestion of hypocrisy.
- On the complainant's authorisation point, the article had followed and elaborated on remarks Mr Paxman had made in an interview organised and sanctioned by the BBC as part of the publicity for his *Empire* book and BBC series.
- It was not believed that Mr Paxman had broken any Editorial Guidelines.

#### Stage 2

The complainant then wrote to the Director, BBC News, saying that the description of Mr Blair had been well beyond a joke or teasing reference. Instead, it was a crude insult and a challenge to the authority of the Director, BBC News.

The Deputy Director and Head of Programmes, BBC News, responded, quoting the BBC Editorial Guidelines and making the following points:

- The article was in the context of promoting the BBC series, *Empire*.
- He disagreed that the piece suggested that Mr Blair was a hypocrite or delusional.
- The phrase “multimillionaire messiah” was in keeping with the sometimes acerbic and humorous style that many viewers appreciated.
- Mr Paxman was ruefully contrasting the fortunes of the two prime ministers and any sarcasm in the piece was generally directed at the “baby-boomers” and the nature of our times.
- The reference to “messiah” was perhaps an over-compression – an oblique way of referring to the Tony Blair Faith Foundation. Taken in isolation, it would have been better not to have used the word but, in context, the average reader would not have drawn the inference from it that Mr Paxman had been calling Mr Blair a hypocrite.
- Even if the phrasing had been less than ideal, it did not amount to a serious breach of standards.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust arguing that the phrase “multimillionaire messiah” represented a serious breach of the BBC Guidelines requiring presenters not to undertake promotional activities which jeopardised a presenter’s reputation for objectivity and impartiality or undermine the public’s perception of the impartiality, integrity, independence and objectivity of the BBC.

The complainant questioned whether Mr Paxman’s inclusion of the term “multimillionaire messiah” was acceptable bearing in mind the previous verdict of the Director of BBC News on phrases used in Mr Paxman’s *Guardian* article, published in November 2010, and the Committee’s previous endorsement of that verdict<sup>4</sup>. He said that Mr Paxman appeared to have ignored the reminder given to him by the Director of BBC News regarding the need to abide by the BBC’s impartiality rules and the requirement to clear his article with his Head of Department. The complainant also considered that the defence given at stage 2 of use of the word “messiah” was extraordinary.

The complainant went on to make the following points:

- The personal jibe was at least on a par with other remarks made by Mr Paxman about Mr Blair about which the complainant had previously complained. The BBC had agreed with him previously that those remarks had been unacceptable.
- Indeed, the phrase “multimillionaire messiah” went even further because it had connotations of delusion and hypocrisy, displaying clear bias against Mr Blair.
- The description went well beyond a joke or teasing reference. It was a crude insult and a challenge to the authority of the Director, BBC News, because the complainant understood she had already warned Mr Paxman about making such remarks in his public writings.
- The clear sarcasm in the phrase was directed at Mr Blair, and not at baby-boomers.
- Stringing the two words “multimillionaire” and “messiah” together conveyed connotations of hypocrisy and delusion: messiahs were not associated with money; and anyone accused of messianic tendencies was obviously regarded as delusional. At the very least, there was undoubtedly a derisive tone in the phrase.

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<sup>4</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/may.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/may.pdf)

- The suggestion that the use of “messiah” was an oblique reference to the Tony Blair Faith Foundation was ridiculous: the foundation had not been mentioned in the article and the explanation had not come from Mr Paxman.

The Trust’s Head of Editorial Standards replied, explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and the article 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 Head of Editorial Standards noted the relevant BBC Editorial Guidelines on conflicts of interest:

“A conflict of interest may arise when the external activities of anyone involved in making our content affects the BBC’s reputation for integrity, independence and high standards, or may be reasonably perceived to do so.” [15.1]

“External activities of individuals working for the BBC must not undermine the public’s perception of the impartiality, integrity, independence and objectivity of the BBC. Nor should they bring the BBC into disrepute.” [15.2.1]

“BBC News and Current Affairs staff, and correspondents and freelances primarily known as BBC news presenters or reporters must refer to a senior level in the relevant division if writing one-off articles on news, current affairs, politics or current world affairs, economics, business, finance, matters of public policy, political or industrial controversy, media issues, and moral or ethical issues or religion.” [15.3.6]

“Regular BBC news presenters should not undertake promotions, endorsements or advertisements for any company, outside organisation or political party. In exceptional circumstances, with the prior approval of the BBC, they may undertake promotional activities for books which they have written. Any such activity must not jeopardise a presenter’s reputation for objectivity and impartiality.” [15.4.2]

“BBC staff, correspondents on non-staff contracts and freelances primarily known as presenters or reporters on BBC News and Current Affairs programmes must not:

- state or reveal publicly how they vote or express support for any political party
- express a view for or against any policy which is a matter of current party political debate
- advocate any particular position on a matter of public policy, political or industrial controversy, or any other ‘controversial subject’

(See Section 4 Impartiality: 4.4.5 - 4.4.6)

- exhort a change in high-profile public policy
- speak or write publicly about the BBC without specific, written prior approval from the relevant head of department.

In addition, they should not normally write regular columns for non-BBC websites or external publications which are not published by the BBC” [15.4.3]

“BBC News and Current Affairs staff, and correspondents and freelances primarily known as BBC news presenters or reporters should not normally write regular columns for non-BBC websites or external publications which are not published by or for the BBC.

In particular, they should not write a regular column which deals with:

- news, current affairs, politics or current world affairs
- economics, business or finance
- matters of public policy, political or industrial controversy
- media issues
- moral or ethical issues or religion.

One-off articles on any of these areas must be referred to a senior level in the relevant division.” [15.4.9]

She also noted the previous complaint made by the complainant about another newspaper article by Mr Paxman, in which Mr Blair was also mentioned. This complaint had proceeded to an appeal and was considered by the ESC in May 2011. She agreed that the Committee’s findings were relevant to the current appeal.

In deciding not to uphold the previous appeal the ESC had said the following:

“The Committee agreed with the Director of News that the style of the article was in keeping with the combative and provocative approach Jeremy Paxman adopts on Newsnight.

“The Committee noted the earlier decision by the Director of News to uphold two aspects of the complaint. However, the Committee did not believe that the article as a whole would have resulted in the undermining of confidence in the professional integrity of Jeremy Paxman or the impartiality of the BBC. Such a conclusion was not a proportionate response to the extent of the breaches. Accordingly it did not accept there had been a breach of the guidelines on Conflicts of Interest with regard to the article overall.”

The Head of Editorial Standards held the view that the complainant would be unlikely to be able to sustain the argument that the language used by Mr Paxman in the current article breached the guidelines and that remained the case when taking into account the ESC’s decision not to uphold the previous appeal referred to above.

She noted that the complainant objected in his current appeal to a phrase consisting of two words, “multimillionaire messiah”, in an article approaching 2,000 words in length. The two words were a passing reference to Mr Blair, the only mention he received, in a piece devoted to the contrast Mr Paxman saw between the privileged and powerful baby-boomers – of which Mr Paxman was one – and today’s less fortunate younger generation. The Head of Editorial Standards thought it probable, therefore, that the ESC would, once more, consider it disproportionate to conclude that the whole article had resulted in the undermining of confidence in the professional integrity of Mr Paxman or the impartiality of the BBC.

On the precise meaning of the two-word phrase “multimillionaire messiah”, it had been argued by the BBC at earlier stages that the crude insult and personal jibe which the complainant perceived would perhaps not have been recognised by the majority of people. The complainant saw connotations of hypocrisy and delusion, while the Deputy Director and Head of Programmes, BBC News, saw an oblique reference to the Tony Blair Faith Foundation. The Head of Editorial Standards would have thought that “multimillionaire” was a matter of fact. As to the exact intention behind use of the word “messiah”, she suggested it was not entirely clear. It may, for example, be a reference to Mr Blair’s commitment to extending aspiration when in power, and chosen for its

alliteration with the preceding word ("multimillionaire"). It was a phrase that had many interpretations, but she did not think it necessarily had connotations of delusion and hypocrisy, as the complainant suggested.

In view of the ESC's previous conclusions, and taking into account that the phrase had no clear meaning, she did not think there was a reasonable prospect of success for the appeal.

The Head of Editorial Standards also disagreed with the complainant's categorisation of the Stage 2 reply as an "extraordinary defence of Mr Paxman's use of this term". In her view, the reply was in fact slightly critical of the phrasing, in calling it "less than ideal" and saying that "taken in isolation it would have been better not to have used that one word", but concluding that it was not a serious breach of the editorial guidelines when taken in its context.

Finally, the complainant expressed concern that Mr Paxman had failed to obtain advance permission for the article from the BBC, as required by the Editorial Guidelines, and that the authority of the Director, BBC News, was being challenged by Mr Paxman in that he ignored her reminder regarding the need to abide by the Impartiality Guidelines. The Head of Editorial Standards noted that the Executive had explained that the newspaper article was part of the promotion of a book and BBC series, and expanded on an interview organised and sanctioned by the BBC. It was a socio-historical article, analysing the legacy of the so-called "Baby-Boom generation", and comparing that generation with those that preceded and succeeded it. Approval from a senior level was therefore not required as the article was not focussed on any of the areas set out in Guidelines 15.4.9 or 15.3.6: news, current affairs, politics or current world affairs, economics, business, finance, matters of public policy, political or industrial controversy, media issues, and moral or ethical issues or religion. Notwithstanding this, it appeared that in practice the article was sanctioned by the BBC in that it formed part of the approved publicity for the BBC series, *Empire*.

The Head of Editorial Standards said that any action taken by the Director of BBC News in the event that she felt her authority was being challenged would not be a matter for the ESC or the BBC Trust.

For all the reasons set out above, she did not consider that 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 made various points, in particular:

- The previous complaint considered by the ESC related to Mr Paxman's whole article whereas the current complaint related to two words. The Head of Editorial Standards was therefore not comparing like with like when she said that the Committee would once more consider it disproportionate to conclude that the whole article was in breach of the guidelines.
- His complaint against specific words in the previous article had been upheld and that was where the comparison should be drawn.
- The explanation given by the Head of Editorial Standards for use of the word "messiah" was absurd and even more ridiculous than that given at Stage 2.



- There was little doubt that the requirement for Mr Paxman to obtain senior authorisation applied to the use of possibly offensive phrases in an article as well as the article as a whole.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the decision of the Head of Editorial Standards not to proceed with the appeal, and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted that the newspaper article was an analysis of the legacy of the "baby boomer" generation and focused on the contrast Mr Paxman saw between the privileged and powerful baby-boomers – of which he, Paxman, was one – and today's less fortunate younger generation. The Committee noted that it was part of the promotion of a BBC book and television series which had been sanctioned by the BBC. The Committee agreed that specific approval for the article was not required as it did not focus on any of the areas set out in the Guidelines on Conflict of Interest.

The Committee noted the complainant's contention that the phrase "multimillionaire messiah" was intended to convey a sense of delusion and hypocrisy. However, noting the interpretation put forward by the BBC and the Head of Editorial Standards, the Committee agreed that the phrase did not necessarily carry the connotations that the complainant suggested given the context in which it was used.

The Committee was mindful of its previous finding on a different article written by Mr Paxman, where it had found that the article as a whole would not have resulted in the undermining of confidence in the professional integrity of Mr Paxman or the impartiality of the BBC.

([http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/may.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/may.pdf))

The Committee agreed that, taking into account the entirety of the *Daily Mail* article, its subject matter and the likely interpretation of the specific phrase in question, it was again not the case that Mr Paxman's or the BBC's impartiality was undermined by what had been written by Mr Paxman.

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

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

## ***Panorama: What's Fuelling Your Energy Bill?, 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 edition of *Panorama* had given a predominately one-sided, anti-green energy account of what was causing energy bills to rise. He said it also contained a serious allegation about the role of Tony Blair, which warranted more than the one-line disclaimer included in the programme to achieve balance. He said that a former Chief Scientist was allowed to accuse Mr Blair in the programme of a multimillion pound "gaffe" in committing the UK to a 15 per cent renewable energy supply target. He said that an unnamed civil servant also accused Mr Blair of losing track of the consequences of this decision and another accused him of taking his "eye off the ball". The complainant said that the only response to this was a one-line rejection of the charge from Tony Blair's office.

The complainant said that the programme was a platform for critics of green energy, with offshore wind being largely held responsible for the rise in energy bills and little being said about the rise in oil and gas prices. He said the questions posed by the presenter and the tone of presentation left no doubt as to what side of the argument he was on. The complainant said the programme was disproportionate in its treatment of the opposing arguments, with many interviewees given time to put the case about the high cost and disadvantages of renewables and nuclear energy, while only two interviewees advocated them. He said that almost no coverage was given to the global warming context of the switch to low carbon sources of energy and there was no voice putting the broader case for wind energy and other renewables.

The complainant said that the spine of the programme was a KPMG report which claimed that a switch to cleaner gas-fired energy would meet the EU emissions target more cheaply and save billions of pounds. This also made up the bulk of the related online article. He said that proponents of this view were given plenty of time to make their case while the counter view was limited to one contribution from the Energy Secretary.

The complainant concluded that, as a result of the above failings, the programme breached the BBC Editorial Guidelines on Impartiality.

In reply, BBC Audience Services explained that the aim of the programme was to seek to better inform the bill-paying public of the impact 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 clearly in the public interest, was biased against renewable energy.

The complainant wrote again outlining the reasons why he believed the programme was neither fair nor impartial. He repeated his view that the programme largely gave a platform to those opposed to green turbines and that the coverage given to these was

disproportionate. He said almost no coverage was given to the global warming context of the switch to low carbon sources of energy and no environmentalist was included to put forward this case.

Audience Services replied that, in the BBC's view, the programme presented a fair, balanced and unbiased account of the issues facing UK energy policy. However, following an internal review, the BBC now accepted that *Panorama* could have more clearly described the forces shaping energy prices in the present, as distinct from those that would 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 at the beginning of the programme and in some of the online material. 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.

As regards the complainant's concerns regarding the way the programme portrayed wind energy, Audience Services said that it was unquestionably the case that this technology was one of the most expensive sources which the government was relying on to supply future electricity.

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 and the likely cost implications that would result from these policies for bill payers. The BBC said that a wide range of potential contributors had been approached and it disagreed that the balance of interviewees was inappropriate.

## **Stage 2**

The complainant then wrote to the ECU, saying that he did not believe that the core elements of his complaint had been addressed. The clarification on the website should have been an apology and should have been broadcast as relatively few viewers would visit the website. It should have been an apology because the title and thrust of the programme gave the impression that it was renewables, and wind energy in particular, that had caused the current rise in energy bills, as well as being responsible for increased prices in the future.

He said the focus of the programme was more about providing a platform for those opposed to wind energy than the cost of meeting carbon reduction targets. He said that any programme about the cost of these targets should have given due prominence to the environmental context of the switch to low carbon sources and so shown the cost of not achieving the targets. He said that climate change was an integral part of any analysis of energy bills.

The ECU considered the complaint in relation to the BBC Editorial Guidelines on Accuracy and Impartiality, and took into account the Fairness guideline on Right of Reply in relation to the point about Tony Blair.

The ECU began by considering whether the programme had been predominantly one-sided in its account of what was causing energy bills to rise by focusing on the cost of renewable energy rather than on the main reason for the rise, the sharp increase in the price of gas. It said that the programme makers had accepted that more could have been done to explain the reasons why energy bills had risen in the recent past, as distinct from the reasons why they might rise in the future. This was reflected in the clarification on the programme's website.

The programme makers maintained that the focus of the programme was on the factors which would affect future energy bills if the Government was to meet its renewable energy and carbon reduction targets in 2020, as set out by the Department of Energy and Climate Change's (DECC's) UK Renewable Energy Road Map.

The ECU agreed that the programme should have done more to draw a distinction between the cause of previous rises in energy bills and the impact of moving towards more clean and renewable energy sources in the future, but it did not believe this led to a serious breach of the guidelines on impartiality. There were sufficient verbal references to ensure viewers understood that the programme was concerned with analysing the future direction of UK energy policy and its implications for bill payers.

As regards the complaint that the programme was one-sided because it focussed on the cost of moving towards more renewable sources of energy and thus gave a platform for critics of green or renewable energy, the ECU said that it thought the balance of the programme and the weight given to different views and opinions had to be judged in the light of the subject matter and content of the programme. This edition of *Panorama* was looking at the cost implications of following the DECC Road Map and, by doing so, was making the point that, while bills may have gone up in the past, the government's commitment to renewable energy and reduced carbon emissions would have a further effect on energy costs. The programme was not considering whether green or renewable energy was a good or bad thing and neither was it considering the potential consequences if the Government did not take action to tackle climate change.

The ECU said that, having watched the programme with this point in mind, it could not agree that it was one-sided. It included contributions from relevant experts who explained why they believed that a move towards renewable energy would lead to price rises, but also those supporting the DECC Road Map. As a result, the ECU disagreed that the programme failed to meet the requirements for due impartiality bearing in mind the subject and the nature of the content.

The ECU then considered the complainant's concerns that the headline and tone of the report were critical of the green energy approach and that almost no coverage was given to the global warming context of the switch to low carbon sources of energy. 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, which was a separate issue. As a result, the ECU could not conclude that there was a requirement to provide the kind of detailed environmental context which the complainant had suggested.

The ECU then considered whether the programme challenged the detailed and complex specifics of the KPMG report promoting gas as the best solution to our energy problems. The contributor discussing the report, Mark Powell, said that it showed the UK could meet its targets for reducing carbon emissions by changing the balance of energy generation by using more gas, less coal and slowing the introduction of wind power; and that this could save £34 billion by 2020.

The ECU said that it disagreed that the contributor was promoting gas as the best solution. He was making a broad point that there was an alternative approach to the Government's Road Map which would cost consumers less money to produce the power which the UK needed whilst still meeting our carbon and renewable targets.

The ECU said that the BBC's Editorial Guidelines did not require that every view or opinion

was balanced by an opposing one, but did require that due weight was given to the range of perspectives and opinions. It did not believe Mr Powell's opinion was given undue weight as it was clearly presented as one of a range of views on the financial consequences of moving towards clean energy.

Turning to the concern about the criticisms of Tony Blair's role, the ECU said that it had seen the correspondence between the programme and Mr Blair's office and it was satisfied that the subject of the programme and the specific claims about the former Prime Minister were made clear in the correspondence. The programme specifically referred to the comment from Sir David King in which he stated that in his opinion it was possible Mr Blair's decision was a "gaffe". Mr Blair's office was also told that sources within Whitehall had told the programme that he was strongly advised that Britain should aim to generate only a maximum of 15 per cent of electricity from renewable sources by 2020. Mr Blair was invited to respond to these claims, but his spokesman responded by providing a brief written statement as follows:

"This was not a gaffe. It was a decision to make a strong commitment to renewables 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 protect us against rising energy costs and promote action on the environment."

The ECU said this was accurately reported in the programme as follows:

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

The ECU said that this was sufficient to meet the requirement of the guidelines.

Finally, the ECU considered whether the subsequent clarification on the *Panorama* website was inadequate. It shared the view of the programme makers that it would have helped to include information on the effect of current gas prices on recent fuel bills. However, it disagreed that a subsequent broadcast correction or apology was necessary because there were sufficient verbal references to ensure viewers understood that the programme was concerned with the future direction of UK energy policy and the financial consequences for those paying energy bills.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, saying that he wished to appeal against two of the ECU's findings. The first concerned the finding that the programme provided an adequate summary of what Tony Blair's office had said to the charge by the Chief Scientist. In the complainant's view, the programme's one line summary of the statement severely weakened the rebuttal provided by Mr Blair's office and represented a breach of the BBC guidelines on accuracy and impartiality.

The complainant also considered that the ECU had come to a wrong decision when deciding that a clarification of the effect of current gas prices on energy bills on the *Panorama* website was adequate and that an apology on a subsequent broadcast of the programme and on its website was not necessary.

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 aspect of the appeal regarding whether *Panorama* had breached BBC Editorial Guidelines when summarising a statement by the office of Mr Blair would be investigated and considered by the Committee at a future meeting.

However, the Head of Editorial Standards had read the relevant correspondence and transcripts of the item in question and considered that the remaining element of the appeal (regarding the website clarification) 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 had noted that the clarification on the *Panorama* website stated the following:

**"Panorama wishes to clarify the following information regarding What's Fuelling Your Energy Bill?, first broadcast on 7 November 2011:**

While the film focussed on government energy policy going forward - and the associated costs - we feel it worth repeating that the rise in current energy bills is predominantly linked to the increase in winter gas prices.

In Ofgem's [Why Are Energy Prices Rising?](#) report from 14 October 2011, it states that winter gas prices were 40% higher for 2011/12 than the previous winter.

In its [Energy and Gas Supply Market Report](#) published the same day, Ofgem found that wholesale electricity and gas costs were the biggest factor in the rise in bills, accounting for 45% of current fuel bills.

We accept that it would have been helpful to our audience had this point been made more clear in the film and the website materials that accompanied it."

The Head of Editorial Standards agreed that the programme should have done more to draw a distinction between the cause of previous rises in energy bills and the impact of moving towards more clean and renewable energy sources in the future.

However, she noted that the programme makers had accepted this and, after an internal review, had taken action to correct any misapprehensions by publishing the clarification that the rise in current prices was predominantly linked with an increase in gas prices.

The Head of Editorial Standards also noted that the programme makers maintained that the focus of this edition of *Panorama* was on the factors which would affect energy bills in the future, if the Government was to meet its renewable energy and carbon reduction targets. The programme contained a number of references to make it clear to viewers that the programme was chiefly concerned with analysing the financial implications of the future direction of UK energy policy, rather than examining why current bills had increased.

The Head of Editorial Standards noted too that the ECU did not find that *Panorama* was one-sided in the way it presented how renewable energy was likely to affect price increases. As a result, the ECU did not agree that the programme failed to meet the requirements for due impartiality. She also noted that the complainant had not appealed to the BBC Trust over this.

As a result, the Head of Editorial Standards did not believe that Trustees would find the clarification published by *Panorama* inadequate. In her view, there was no reasonable prospect of success for the appeal on this issue.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with this aspect of his appeal. He continued to believe that the website clarification was insufficient given the biased nature of the programme and the controversy which it had generated.

### **The Committee's decision**

The Committee was provided with the letter from the Senior Editorial Strategy Adviser setting out the decision of the Head of Editorial Standards not to proceed with an element of the appeal, 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 argument that the website clarification was insufficient. The Committee noted that the programme had accepted it should have done more to draw a distinction between the cause of previous rises in energy bills and the impact of moving towards more clean and renewable energy sources in the future. The Committee also noted the clarification which had been provided on the *Panorama* website. Given that the ECU investigation had not found the programme to have been biased in the way it presented how renewable energy was likely to affect price increases, the Committee did not consider that there was a reasonable prospect of success for an appeal on the grounds that there should be a broadcast apology.

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



## **PM, Radio 4, 19 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 the Stern Gang were not "paramilitaries", as the programme described them, but Zionist terrorists and that this was another example of the BBC dissembling over this issue.

BBC Audience Services replied that they believed the term "paramilitary" was a clearer explanation of the group's organisation than "terrorist", and that there was no inherent bias in the choice of this description.

The complainant wrote again arguing that the term "paramilitary" was fundamentally inaccurate, and offering an analysis of the differing meanings of the two terms with reference to various groups. He concluded that this value-neutral description of the Stern Gang was a breach of the BBC's Charter obligations.

Audience Services replied providing a response from the programme team which offered a dictionary definition of the word "paramilitary" in support of their use of it. They believed it to be the most accurate, clear and value-free description of the Stern Gang taking into account its history and organisation.

#### **Stage 2**

The complainant then wrote to the ECU, disputing the dictionary definition offered by the programme team and giving numerous examples in support of his contention that the term "paramilitary" was not an accurate one to describe the Stern Gang. He also strongly objected to use of the phrase "value-free" in the programme team's response, arguing that this lack of moral compass, when referring to a violent, terrorist group, was utterly inappropriate. This attitude flew in the face of the Charter requirement that programme makers offer value judgements on questions of fundamental human values.

An ECU Complaints Director considered the complaint in relation to the BBC's Editorial Guidelines on Accuracy, in particular the requirement for output to be "well-sourced, based on sound evidence, thoroughly tested and presented in clear, precise language" and the guidelines on "the use of language in the context of war, terror and emergencies".

The latter guidelines stated that, "the word 'terrorist' itself can be a barrier rather than an aid to understanding" and that it was incumbent on the BBC to "convey to our audience the full consequences of the act by describing what happened". In this context, the programme had given a detailed and explicit account of the murder in question which left the audience in no doubt that the Stern Gang's action was a terrorist killing. He therefore did not uphold the complaint.

### **Appeal to the BBC Trust**

The complainant escalated his complaint to the BBC Trust, saying that the UK Government, Zionist organisations and the group themselves all described the Stern Gang as a terrorist organisation. In the face of this indisputable evidence, the BBC's responses had been evasive and ridiculous. The use of the two quite distinct terms, "paramilitary" and "terrorist", had enormous significance in this and other areas of conflict, and to use one rather than another reflected upon crucial issues of balance and consistency.

The complainant took issue with the ECU's reliance on an interpretation of particular phrases from the Editorial Guidelines rather than the BBC's broader public service objectives as laid out in the Charter, notably those concerning sustaining citizenship and civil society. The complainant said that the BBC rightly took a moral stance on issues such as paedophilia and rioting, and asked how could it justify being "value-neutral" about a terrorist group and its activities.

The complainant quoted from the Government's National Security Strategy Review which articulated the ethical values which Britain stood for around the world, values which the BBC itself was required to uphold. He said that in this context, the Charter's overall obligations took precedence over the particular guidelines in question, and these should be the criteria by which this issue and this appeal should be judged.

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 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 Head of Editorial Standards noted that *PMs* use of the term "paramilitaries" was followed with a full and detailed account of the Stern Gang's activities. The audience would have been aware of the nature of the gang from these descriptions.

She also noted that it was the right and responsibility of the BBC Executive to choose the wording which they deemed most appropriate in any particular context. This editorial judgement was something for which the BBC Executive had sole responsibility. The Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She said that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial guidelines. The Head of Editorial Standards was clear that the complainant had not made a case for such a breach in this instance.

While the Head of Editorial Standards noted the complainant's comment about the BBC's public purposes, the Trust set the BBC's Editorial Guidelines within the overall framework of the BBC Charter, and it was these guidelines which formed the basis for the Trust's consideration of any appeals.

For these reasons the Head of Editorial Standards did not believe that 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 said that a NATO definition of counter insurgency couples paramilitaries with other governmental levers used to tackle insurgents, rather than being insurgents themselves, and the BBC's own Editorial Guidelines used the word "terrorists". He said that by conflating "paramilitary" with "terrorist", the BBC was assisting Israel in claiming Hamas paramilitary police were lawful targets.

### **The Committee's decision**

The Committee was provided with the Senior Editorial Strategy Adviser's letter setting out the Head of Editorial Standards' decision not to proceed with the appeal, and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision.

The Committee noted the complainant's view that it was inaccurate to refer to the Stern Gang as "paramilitaries" and that they should be referred to as terrorists. The Committee also noted the complainant's view that the responses to the complaint relied on interpretation of particular phrases from the BBC's Editorial Guidelines rather than the BBC's broader public service obligations set out in the Charter and Agreement.

The Committee noted that the ECU and Head of Editorial Standards' responses made clear that the use of the term "paramilitaries" was followed with a full and detailed account of the Stern Gang's activities which would have made clear to audiences the nature of the Gang and specifically that their action was a terrorist killing. The Committee noted the complainant's view that consideration of the BBC's public purposes should be taken into account, but agreed that it was the Editorial Guidelines which form the basis for the Trust's consideration of appeals. The Committee agreed that there was no case for a breach of the Guidelines on Accuracy in this instance.

The Committee noted the complainant's comments that by conflating paramilitary with terrorist, the BBC was assisting Israel in claiming Hamas paramilitary police were lawful targets. The Committee noted that, unless there is a breach of the BBC's editorial standards, the Trust has no involvement in the editorial decisions about which wording would be most appropriate to use in any particular context. The BBC Executive has sole responsibility for such decisions of editorial judgement, within the guidelines set by the Trust. The Committee noted that the complainant provided no examples of instances where he felt the BBC had implied Hamas military police were lawful targets.

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

## ***The Conspiracy Files: 9/11 Ten Years On, BBC Two, 29 August 2011***

Three complainants appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that their appeals did not qualify to proceed for consideration by the Committee.

### **Summary of complaints**

The following summary covers points made by all those who complained about this programme, including the three complainants who challenged the Head of Editorial Standard's decision. In May 2012 the Editorial Standards Committee agreed that, in accordance with the Editorial Complaints and Appeals Procedure, appeals received on the subject of *The Conspiracy Files: 9/11 Ten Years On* could be consolidated and considered together across the range of issues raised.

#### Scope of complaints

Complainants' appeals raised editorial issues relating to alleged breaches of the BBC's Editorial Guidelines on:

1. Accuracy;
2. Impartiality;
3. Harm and Offence;
4. Fairness, Contributors and Consent;
5. War, Terror and Emergencies;
6. Editorial Integrity and Independence from External Interests; and
7. Accountability.

Complainants also raised:

8. Regulatory issues relating to the BBC's Royal Charter and its Agreement with the Secretary of State for Culture, Media and Sport.

A large number of points of complaint concerned the omission from the programme of certain content, such as contributions from particular eye-witnesses, relatives of victims, proponents of alternative theories and interest groups, and certain information, argument and analysis.

Complainants argued that such omissions amounted to breaches of the Editorial Guidelines on both Accuracy and Impartiality.

#### 1. Accuracy

##### 1.1 General

One complainant argued that the programme had inaccurately described the official version of events as unequivocal, whereas the official version had changed over time, with later iterations contradicting earlier ones. Another complainant argued that the programme makers had knowingly misled the audience.

##### 1.2 Collapse of World Trade Center (WTC) towers

Complainants argued that the programme's explanation of the cause of the collapse of the WTC's North (WTC1) and South (WTC2) Towers (the Twin Towers) and Tower 7 (WTC7) was inaccurate. It was argued that contributor Professor Abolhassan Astaneh's theory which had been included in the programme had been discredited by Architects and Engineers for 9/11 Truth (9/11 Truth Movement), an organisation that disputes the official version of events and is seeking a new independent investigation into the events of 9/11, and others.

One complainant challenged the BBC to explain why it had aired the "pancake theory", which he said official investigators had rejected. The complainant also queried why the programme had not reported that the National Institute of Standards and Technology (NIST) report into the collapse of WTC1 and WTC2 had only addressed the collapse of the floors immediately involved with the aircraft impacts, not the disintegration of the whole building.

A complainant also alleged that, in not mentioning that WTC1 and WTC2 had contained 47 uprights intermeshed with steel beams accredited to withstand 2,000 degrees, the programme was misleading. The complainant alleged that towers with 110 floors (WTC1 and WTC2) and 47 floors (WTC7) could not disintegrate into microscopic dust within seconds as a result of small fires. The complainant also argued that the programme had misrepresented the findings of the RJ Lee Group's WTC Dust Signature Report.

One complainant noted that the BBC had reported the collapse of WTC7 20 minutes before it actually happened, and alleged this was evidence that WTC7 had not collapsed as a result of structural failure.

### 1.3 Presence of thermitic material in WTC dust

One complainant stated that the programme had failed to link contributor Professor Niels Harrit's discovery of thermitic material in dust from the collapsed WTC to the available chain of evidence. The complainant said this resulted in the misrepresentation of Professor Harrit's findings, and was evidence of bias (see further under Impartiality, below). It was also argued that contributor Professor Chris Pistorius's opposing view was not evidenced by any scientific paper or tests.

### 1.4 Computer simulations

One complainant argued that the programme had used computer simulations which were not based on peer-reviewed data and were therefore unreliable.

### 1.5 Uncorrected errors

One complainant claimed that the 2007 edition of The Conspiracy Files had incorrectly stated that WTC7 had not collapsed in free fall. He said that since then NIST had agreed that WTC7 had come down at free-fall speed for at least 2.25 seconds. The complainant said that the programme had failed to make what he described as this "absolutely critical" correction.

Another complainant challenged the BBC to explain why it had not corrected the 2007 edition's allegedly inaccurate introduction and sign-off of contributor Professor Christoph Hoffman.

### 1.6 Prior warnings

One complainant argued that the programme had incorrectly stated that the FBI and CIA

insisted that they had received no specific warnings of the 9/11 hijackings.

According to the complainant, the use of the word "specific" obscured the fact that such information was indeed known by those agencies.

Another complainant noted that Richard Clarke (then National Co-ordinator for Counter Terrorism) had stated elsewhere that the CIA knew that the hijackers were in the US and were planning something, and that the CIA had deliberately withheld this information. The complainant believed that the omission of Mr Clarke's statement was misleading.

### 1.7 Disposal of WTC debris

It was argued that the programme had inaccurately stated that all that remained of the WTC debris had been consigned to a hangar in New York State, whereas steel girders had been recycled and much of the debris was pulverised into dust.

### 1.8 Other issues

One complainant noted that, according to a BBC news report, five of the alleged hijackers were alive, and asked who (if the report was correct) had hijacked the planes. Another complainant argued that the inclusion of a CIA agent swearing allegiance at the start of the programme gave the misleading impression that the CIA was above reproach. The same complainant argued that the programme had inaccurately stated that when US air traffic control had tried to locate the hijacked planes there were 4,500 blips on their screens, whereas all four hijacked planes should have been readily identifiable.

It was also argued that the programme was misleading when it said that US military equipment and procedure were designed and oriented to identify and respond to external threats, not internal ones. One complainant argued that the programme had misled viewers by failing to disclose evidence of the US government's alleged involvement in previous conspiracies. Another complainant argued that the programme had referred to other US Government conspiracies, but had said that questioning of the official version of events in relation to 9/11 was out of bounds, and had therefore failed to weigh all relevant facts.

## 2. Impartiality

### 2.1 General bias

Complainants argued that, in general, the BBC's coverage of 9/11 during the past 10 years had been biased in favour of the official version of events.

According to complainants, the BBC had broadcast a number of items specifically aimed at debunking the views of so-called conspiracy theorists, and various news and documentary items had grossly misrepresented crucial issues concerning flaws in the official version of events.

One complainant argued that, given the pivotal significance of 9/11, the BBC's failure to commission an investigative series, rather than an hour-long programme, indicated an intention to confuse the issues and engineer public acquiescence with the official version of events.

A number of complaints of bias relating specifically to the programme were argued also to be of more general application.

## 2.2 Bias by inaccuracy

One complainant argued that all the BBC's programmes on 9/11 were biased, in that the inaccuracies and misrepresentations they allegedly contained were deliberate.

## 2.3 Biased depiction of competing theories

According to one complainant, the official version of events was consistently depicted as fact, which was not only inaccurate and misleading but also biased.

Another complainant noted that the programme had included contributions (e.g. from writer Frank Spotnitz) which were intended to discredit and undermine alternative theorists' views. It was argued that the programme was designed to discredit those who questioned authority, and that it had repeatedly denigrated as conspiracy theorists those who criticised the official version.

In the view of one complainant, the frequent repetition of the phrase "conspiracy theory" was used to condition the audience to support UK and US government policy. The complainant argued that, in addressing the persistence and potency of conspiracy theories, the programme had excluded certain writers and strands of thought, and had dishonestly ignored the fact that human behaviour was team-, group-, tribe-, clan- and family-oriented. The complainant also cited contributor Special Agent Jean O'Connor's alleged denigration of those who questioned the official version of events as evidence of the programme's lack of due impartiality.

## 2.4 Bias by omission: (1) Selection of contributors and perspectives

It was argued that the programme had included contributions from 145 supporters of the official theory and just four sceptics and therefore contained a significant imbalance of views.

One complainant felt that the programme had cherry-picked information and hypotheses which supported the official version of events. Some complainants contended that the BBC had failed to interview, or had restricted its broadcast of the accounts of, a number of individual eye-witnesses and advocates of alternative theories, and of campaigning organisations offering an alternative perspective.

One complainant argued that, if such contributors had been unavailable for interview, their views should nevertheless have been reported.

## 2.5 Bias by omission: (2) Collapse of WTC towers

Complainants felt that the programme had not reflected the opinion of experts who questioned the official version of the cause of the Twin Towers' collapse, nor had it discussed any of the various theories which challenged the original NIST evaluation, including the evidence supporting the theory of controlled explosions. One complainant noted that the programme had failed to mention the claim that there were explosions in the basements of the Twin Towers both before and after the aircraft had struck.

It was argued that the programme had presented its explanation of why the WTC towers collapsed as fact, and had not acknowledged that this was disputed. The BBC had not reported the fact that NIST had initially stated that WTC7 did not collapse at free-fall speed, but had eventually accepted that this had occurred for at least 2.25 seconds. Nor had the BBC reported that, according to experts, the only way such a building could have collapsed at free-fall speed was by controlled demolition, using explosives.



According to one complainant, the BBC had not shown any of the video footage of the collapse of WTC7, as a consequence of which the majority of the public were still unaware that a third tower had collapsed. The same complainant noted that the BBC had not reported that the 9/11 Commission Report (the report setting out the official version of events) had not mentioned the collapse of WTC7. One complainant noted that the programme had not raised the allegations that evidence from the Twin Towers had not been preserved and standard investigation procedure was not followed.

#### 2.6 Bias by omission: (3) Presence of thermitic material in WTC dust

One complainant queried why the BBC had not sought written (rather than oral) scientific evidence to challenge the claims of architect and campaigner Richard Gage and Professor Niels Harrit, which concerned the presence of thermitic material in dust from the WTC collapse.

The complainant said that not linking Professor Harrit's findings to the available chain of evidence was a breach of the Impartiality Guidelines (as well as a breach of the Accuracy Guidelines).

According to another complainant, the editing of Professor Harrit's interview had presented a biased view of his theory, and the programme makers had tried to further discredit his findings by using testimony from experts who, by their own admission, had not actually looked at his work.

Another complainant argued that the programme had depicted Professor Harrit's paper as irrelevant, had dismissed it because it had not been peer-reviewed, had sought to discredit Professor Harrit as a witness, and had not given him an opportunity to respond to criticism. This, the complainant argued, was evidence of bias.

#### 2.7 Bias by omission: (4) Pentagon/American Airlines Flight 77

One complainant enquired about the whereabouts of the unreleased CCTV footage of the Pentagon strike, querying why BBC journalists had not asked to see it and why it was being "kept secret". Complainants said that the programme had not questioned why the US authorities had failed to release all available CCTV footage. One complainant also said that the programme had not mentioned that the missile batteries protecting the Pentagon had failed.

Complainants argued that the programme had also failed to mention a number of alleged factual irregularities.

One complainant noted that the programme had stated, "If a large passenger jet crashed into the Pentagon, why was the hole in the exterior wall apparently so small?" In the complainant's view, the use of word "apparently" was intended to cast doubt on the claim, and was evidence of bias. It was also argued that the programme had not made it clear that the Pentagon was a crime scene, and so no wreckage should have been touched or removed, and that the programme had failed to mention that the Pentagon had received no warning of any attack.

According to complainants, these omissions indicated a lack of balance.

#### 2.8 Bias by omission: (5) United Airlines Flight 93

One complainant noted that the programme had not reported that mobile phone calls

were said to have been made from Flight 93, but it was impossible to make such calls in 2001.

Another complainant asked why the programme had not shown video footage of substantial wreckage at the crash site in Shanksville, Pennsylvania.

#### 2.9 Bias by omission: (6) Vested interests

It was argued that the programme makers had effectively concealed the fact that certain contributors had a vested interest in the official version of events.

#### 2.10 Bias by omission: (7) 9/11 Commission members and NIST reconsider initial findings

Complainants argued that the programme had failed to report the allegation that the official version of events had been largely discredited by 9/11 Commission members' subsequent comments and NIST's revised conclusions.

One complainant said the BBC had failed to inform the audience of the view that the majority of 9/11 Commission members had attributed the failings of the 9/11 Commission Report to conflicting evidence submitted by the Federal Aviation Administration (FAA), the North American Aerospace Defense Command (NORAD), the White House and others.

#### 2.11 Bias by omission: (8) Suspicious deaths

One complainant said that the BBC had omitted to report the allegedly suspicious deaths of a number of persons associated with inquiries into 9/11. It was argued that this omission amounted to a lack of balance.

#### 2.12 Bias by omission: (9) Other matters that should have been addressed

Complainants argued that:

- the programme had referred only to a "routine military exercise" that had been taking place on 9/11, and had failed to mention the authorities' statement that an unprecedented number of military and emergency services exercises (described by one complainant as "war games") had taken place on that day;
- the programme had not reported that the procedure for the interception of hijacked aircraft was changed just before 9/11 and was changed back again shortly afterwards, nor had it reported the relevant testimony of then Secretary of Transportation, Norman Mineta;
- the programme had not included relevant facts about terrorist funding, including allegations concerning the Pakistani Secret Intelligence Service;
- the following lines of inquiry were not pursued:
  - the whereabouts of Secretary of Defense Donald Rumsfeld on 9/11;
  - the feasibility of evidence, such as the alleged discovery of forged hijacker passports.

### 3. Harm and offence

One complainant asserted that the programme had contained an image of very brief

duration, perceived to be what the complainant termed a “horse’s ass”, which the complainant construed as mocking alternative theorists’ views.

#### 4. Fairness, contributors and consent

Complainants argued that the interviewer’s conduct had been unfair towards interviewee Professor Niels Harrit. Having viewed the unedited footage of the interview, one complainant likened it to a cruel cross-examination, and queried whether contributor Jean O’Connor (who supported the official version of events) had been similarly grilled for three hours. According to another complainant, the unedited footage revealed attempts by the interviewer to provoke an angry response from Professor Harrit by means of repeated accusations, and by trying to put words into his mouth.

The complainant said that the interviewer would have been able to cherry-pick clips to fit the preconceived editorial line.

One complainant argued that it would have been editorially fairer to have included first-hand, eyewitness contributions that supported alternative theories, rather than from secondary sources.

Another complainant argued that the programme’s conclusion had been intended to make members of the 9/11 Truth Movement look like heartless individuals. According to the complainant, the programme had portrayed the makers of the *Loose Change* documentary as typical conspiracy theorists seeking commercial gain, which in the complainant’s view was an attempt to discredit their work.

#### 5. War, terror and emergencies

One complainant argued that the BBC was in breach of section 11 of the Editorial Guidelines, in that it had failed to scrupulously apply the principles of accuracy and impartiality in covering an international emergency.

#### 6. Editorial integrity and independence from external interests

Complainants argued that the BBC was allowing itself to be used as an instrument of government propaganda. They contended that, whereas the BBC purported to be independent of government, the terms of clauses 4 and 81 of its Agreement with the Secretary of State meant that it was effectively under state control. One complainant asserted that the BBC received money from the US State Department. Another complainant contended that the BBC was effectively carrying out the US government’s “full spectrum dominance strategy” to propagandise its position on 9/11.

One complainant cited the former BBC Trust Chairman’s preface to the Editorial Guidelines, in which he asserted that, without adherence to the Guidelines’ standards of fairness, accuracy and impartiality, the BBC’s key role in supporting an informed democracy could not be achieved.

Complainants argued that the BBC had knowingly kept the public misinformed in order to gain support for a war which the US had been planning, pre-9/11, to wage in Afghanistan. Another complainant argued that the events of 9/11 were the basis for widespread restrictions on civil liberties and for the “War on Terror”, which had led directly to two major wars in Afghanistan and Iraq.

One complainant cited a report by the BBC’s George Arney, which quoted a Pakistani diplomat’s statement that the US had been planning military action against Osama Bin

Laden and the Taliban before 9/11.

The complainant also cited a BBC documentary entitled *Timewatch – Operation Gladio*, which concerned false flag operations. In the complainant's view, the BBC's failure to re-broadcast the *Timewatch* programme was suspicious and not incorporating it into its coverage of 9/11 was grossly misleading.

## **Summary of the Editorial Complaints Unit's findings (stage 2 of the complaints process)**

The paragraph numbers below refer to the corresponding paragraphs in the summary of complaints above.

### 1. Accuracy

#### 1.1 General

The ECU was not aware that any aspect of the official version of events, as described by the applicable section of the programme, had changed in any material way. Therefore it could not conclude that it was inaccurate or misleading to suggest that the official version was unequivocal, regardless of whether other aspects of the official explanation had changed.

#### 1.2 Collapse of World Trade Center (WTC) towers

The ECU noted that programme had included a contribution from Leslie Robertson, the original structural engineer on the WTC towers, who had challenged Professor Astanek's theory and offered an alternative view. The ECU was therefore satisfied that the programme was appropriately balanced and that viewers would not have been materially misled.

The programme had accurately reflected the NIST report's conclusions on the collapse of WTC1 and WTC2. There was no reference to the "pancake theory", and only fleeting use of a graphic which had previously been used to demonstrate it. The ECU did not believe the graphic was misleading in context, since it was one brief element in a simple explanation of the official version of how the WTC towers had collapsed.

The ECU did not see how any previous views which may have been expressed by NIST (or its members) prior to the publication of its final report were relevant. If the organisation had amended its thinking as to the cause of collapse that would not necessarily lend weight to the theory that the towers were brought down by controlled explosions.

The ECU did not agree that Leslie Robertson's analysis rested on the "pancake" theory. Mr Robertson had expressed the view that, as a building comes down, it creates very high internal air pressures, resulting in the emission of gas from the building. Viewers would have judged this against the alternative explanations that were offered.

The ECU noted that the focus of the NIST report was on the sequence of events from the instant of aircraft impact to the initiation of collapse for each tower and included little analysis of the structural behaviour of the tower after the conditions for collapse initiation were reached and collapse became inevitable, but could not agree that it was necessary to provide this somewhat detailed information to the audience. The NIST report had said that it found no corroborating evidence for alternative hypotheses suggesting that the WTC towers were brought down by controlled demolition using explosives, leaving no

doubt that the official version of events rejected Mr Avery's theory. The programme had included three different theories as to what had caused the WTC towers to come down, and had also reflected the view of the official report, and had therefore achieved the necessary balance.

Similarly, the ECU could not conclude that the omission of an explanation that the Twin Towers contained 47 uprights intermeshed with steel beams accredited to withstand 2,000 degrees was misleading.

The ECU noted that the programme had stated that the RJ Lee Group had taken about 100,000 samples and analysed them all thoroughly. In the ECU's view, the programme had not presented any findings that the RJ Lee Group may or may not have published, and so the ECU could not agree that the programme had misrepresented any such findings.

### 1.3 Presence of thermitic material in WTC dust

The ECU accepted that, if the programme had included seismic evidence, it might have given the audience a fuller picture and added weight to the controlled demolition theory. However, in a programme of limited duration, programme makers had to exercise editorial judgement about which information to include. The controlled demolition theory had been given significant air time, and viewers would have been in no doubt that it was one of the main alternative theories. The ECU could not conclude that the omission of seismic evidence would have given a misleading impression or led to a lack of balance, particularly bearing in mind that the programme might reasonably have expected to reflect views which challenged complainants' interpretation of the seismic evidence.

The programme had included a number of contributions from Professor Harrit, and had given a full and fair explanation his theory that the presence of thermite particles in WTC dust samples indicated the use of explosives and incendiary devices. Viewers would have been in no doubt that members of the 9/11 Truth Movement believed that this supported the view that the WTC towers were brought down by controlled explosions. The programme had previously reported the theory that the Twin Towers had been brought down in that way, using footage from *Loose Change*, and had also reported that people had said they had heard explosions. The ECU considered this sufficient to ensure that viewers were aware of one of the main theories put forward by the 9/11 Truth Movement and the supporting evidence. Noting that the programme had gone on to include balancing contributions from Professors Fruehan and Pistorius, who offered an alternative explanation, the ECU considered this to be both reasonable and consistent with the programme's approach to other theories. Noting that Professor Harrit was given the last word on the matter, the ECU concluded that it could not agree that the programme had discredited Professor Harrit or had failed to give him an appropriate opportunity to put forward his views. [This consideration also applied to point 2.6 below]

### 1.4 Computer simulations

It was made clear to viewers that the computer simulations complained of provided a simple, visual illustration of the official version of what had happened when the planes hit the WTC towers, and was not presented as the definitive version of events. Similarly, graphic representations from *Loose Change* had been used to demonstrate other explanations. The ECU thought that most viewers would be familiar with the use of graphics and would have understood their purpose in the context of such a programme.

### 1.5 Uncorrected errors

If programme duration were not a consideration, it would have added to the audience's understanding and awareness, and would arguably have lent weight to Professor Harrit's theory, if the programme had mentioned NIST's acknowledgement that WTC7 had fallen briefly at free fall. However, viewers would have been in no doubt that there were those who believed that the WTC towers were demolished by explosives, and the ECU was not persuaded that the omission of this aspect would have given a materially misleading impression or had led to a lack of due impartiality. [This consideration also applied to point 2.5 below]

With regard to the alleged inaccuracies concerning Professor Christoph Hoffman, the ECU noted that the Editorial Standards Committee of the BBC Trust had reached its own finding on the due accuracy and impartiality of the 2007 edition, and that the ECU was bound by that decision. Furthermore, any new points about the 2007 edition were out of time. As this point of complaint referred to the 2007 edition, the ECU was unable to address it.

### 1.6 Prior warnings

In the ECU's view, the programme had established that, although the FBI and CIA were aware of an impending threat, the lack of co-ordination or sharing of intelligence meant that there was no information about the particulars of any attack. The claim about a lack of specific warnings was clearly attributed to the CIA and FBI, and so audiences would have been aware that this was the view of the agencies rather than an established fact.

Viewers would have been aware from Richard Clarke's contribution that there was a lack of co-operation between the CIA and other agencies, and were informed by the narration that the suspects might have been arrested if the CIA had released information more promptly. The ECU disagreed that the programme had failed to reflect concerns about the CIA's actions, concluded that there did not appear to be persuasive evidence that the CIA had knowingly allowed the 9/11 attacks to take place, and disagreed that this point should have been included in the programme.

### 1.7 Disposal of WTC debris

The programme had shown a hangar full of twisted and burned steel girders and other debris, with the accompanying line of script:

"This is all that remains of America's biggest crime scene. The World Trade Centre consigned to a hangar in a New York suburb."

The ECU did not accept that this was misleading, or that in context there was any requirement to provide further information about the removal of material from the WTC or the two other sites.

### 1.8 Other issues

The complainant's reference to a CIA agent swearing allegiance appeared to refer to the contribution of former CIA analyst, Philip Mudd. The ECU took the view that Philip Mudd's comments would not have given the impression that the CIA was above reproach, as the complainant had claimed. In the ECU's opinion, Mr Mudd was expressing scepticism about the allegations of a cover-up. The ECU noted that all the other contributions in that section of the programme had come from the four interviewees who supported the idea of a conspiracy and who implicitly rejected Mr Mudd's view. The ECU therefore believed that the balance of this section was, if anything, skewed towards the views of those who rejected Mr Mudd's version.



With regard to the programme's reference to air traffic controllers' difficulties in locating the hijacked planes, the ECU took the view that, although it could not know what air traffic controllers or the military could see on their radar screens at the time, it could not conclude that what was said was materially inaccurate or misleading in context. The broad point, which the ECU considered reasonable to assume the audience would understand, was that there was a high degree of confusion and lack of specific information. The script had suggested that the military were searching for one plane among many, and that the plane in question was off course and had turned off its transponder, which would presumably make the plane more difficult to locate and track.

The ECU disagreed that the section of the programme in which it was suggested that military equipment wasn't designed to look inside the United States was materially misleading. The comment was made by Colin Scoggins, air traffic controller with the FAA, and the ECU considered it reasonable to assume that the audience would understand that his was an informed view, based on personal experience. The ECU also thought that the recordings from the day appeared to support the view that there was a lack of communication between the FAA and NORAD, that there was a delay in getting planes off the ground, and that pilots were not clear where they were meant to be heading. Taking these points together, the ECU did not believe that Mr Scoggins' view about NORAD equipment was likely to have given a materially misleading impression.

In considering the appeals regarding the 2007 version of the programme, the Trust's Editorial Standards Committee had ruled that it did not consider it necessary to explore the history of deceit of the US government in order to satisfy the requirement of the accuracy guidelines to weigh all relevant facts to get at the truth. The ESC said that the purpose of the original programme (and equally, in the ECU's view, of the revised edition) was to consider specific theories relating to the incidents on 9/11 and not conspiracy theories relating to other events in US history. There was, therefore, no requirement to refer to previous conspiracy theories relating to the US government.

## 2. Impartiality

### 2.1 General bias

As complaints of general bias were beyond its remit, the ECU did not consider these.

### 2.2 Bias by inaccuracy

As the ECU had determined that the programme was duly accurate, the complaint of bias by inaccuracy necessarily fell away.

### 2.3 Biased depiction of competing theories

In the ECU's view, the programme had clearly reflected the fact that there was a range of views on what had happened on 9/11, and viewers would have been in no doubt that there were those who believed that the official version of events was a work of fiction. The ECU believed that viewers would also have understood that contributors were expressing their own, genuinely held, beliefs about what had happened and who was responsible, and would have been able to judge for themselves and draw their own conclusions. The ECU could not therefore agree that the programme had presented the official version of events as fact. [This consideration also applied to point 2.5 below]

In the ECU's view, the revised programme's approach to the various conspiracy theories was appropriate, since it broadly mirrored that of the original. The revised programme



had extended one of the most widely discussed new theories (concerning the presence of thermite material in WTC dust), presenting both sides' views. It had also included new contributions on theories that had featured in the original programme. Further, all original contributors had been contacted to ensure they were happy for their contributions to be reused, and all except Dylan Avery had confirmed that their original contributions accurately reflected their current views. Taking these points together, the ECU could not conclude that the 2011 programme had failed to achieve due impartiality.

The ECU did not agree that the programme had denigrated contributors offering alternative perspectives by describing them as "conspiracy theorists". In the ECU's view, the description would not have been understood by a general audience to be necessarily negative or derogatory. A "conspiracy theory" was generally understood to refer to a situation where an official version of events was challenged, often with the suggestion of a cover-up or a secret plot. Supporters of such theories could legitimately be described as "conspiracy theorists" without this being prejudicial or denigrating.

The ECU did not believe that there was anything inherently negative in the use of the phrase "conspiracy theory" or "conspiracy theorists", and could not therefore uphold the complaint about subliminal conditioning. The programme had presented the views of those who maintained that there had been a government conspiracy to hide the truth, and of those who supported the official version of events. This had ensured due impartiality.

It seemed reasonable to the ECU for the programme to explore why some groups and individuals chose to question the official version of events, and to include a contribution from Alex Jones in which he explained the reasons for his mistrust of government. The ECU did not therefore have grounds to uphold this point of complaint.

The choice of what information and contributors to include was a matter of editorial judgement and the programme makers' discretion. The programme had presented the views of Frank Spotnitz on why some people may question official versions of events and Alex Jones on why people may not trust their politicians and authorities. The ECU could not agree that the omission of a reference to the work of writers such as Shakespeare or Machiavelli had contributed to a lack of balance or would have misled the audience. The ECU could not see the relevance of the complainant's reference to "cliquish, partisan" human behaviour. The programme had reflected that there are at least two conflicting versions of what happened on 9/11, and viewers would have been in no doubt that there was a group of people who genuinely believed that 9/11 was a government conspiracy.

In the ECU's opinion, Jean O'Connor was clearly putting forward a personal view, and viewers would have therefore judged her comments in this light. The ECU noted that the programme had included numerous contributions from both sides, and was satisfied that the programme had achieved the required balance and due impartiality.

#### 2.4 Bias by omission: (1) Selection of contributors and perspectives

The programme had concentrated on the opinions of four of the most prominent, influential and respected figures in the 9/11 Truth Movement, who represented the more credible and widely-held theories, as the programme makers had felt it would be more informative to allow a smaller number of contributors more time to explain their theories, rather than attempt to cover a wider range of views in a more cursory manner. The ECU was satisfied that those contributors had been able to put forward their views and theories in detail, and at length, which ensured that the audience was aware of the arguments of those who opposed the official version of events. The ECU noted that due impartiality was not simply a question of equal time or numbers, and that the fact that the

programme had included more advocates of the official version of events would not necessarily have led to a lack of balance. The question was whether the programme had featured a wide range of significant views and perspectives, and had given them due weight. The ECU noted that the programme had given the four “conspiracy theorists” ample time to explain their views, often using their own material, and that in many cases where there was an exchange of views, the final word had been given to the theorists.

The ECU noted that the Trust’s Editorial Standards Committee had found that the 2007 edition of the programme had reflected the mainstream theories concerning 9/11. The ESC was satisfied that the theories covered in the programme were sufficient to provide viewers with enough relevant information to draw their own conclusions about the activities of the US government in relation to 9/11. The programme had included numerous contributions from leading voices in the 9/11 Truth Movement, who were able to put across a credible and authoritative view of the conspiracy theory arguments and to challenge the official version of events in robust and forthright terms.

The ECU accepted that the programme could have included a wider range of contributors – including survivors, first responders, victims’ relatives, academics, scientists, architects and firefighters – or different contributors. However, the ESC had previously concluded that it was reasonable for the programme to limit the scope of its investigation to the mainstream theories, and had ruled that the programme had presented the views of both sides on each of those theories in a manner which ensured due impartiality. The ESC had decided the programme gave sufficient information in support of both the various alternative theories and the official view to enable the audience to have a reasonable understanding of the various arguments. The ESC had also noted that the programme had been fair and open-minded in examining the evidence, weighing the material facts and presenting the various theories.

The ECU said that, in reflecting both sides of the debate, it was necessary to include contributions from those who supported the official version of events. This did not amount to “cherry-picking”.

The ECU did not believe that it was necessary to interview an explosives expert to contradict the official account that no explosives were present. Professor Harrit was described as a chemistry professor, and had stated explicitly that WTC7 was brought down by controlled demolition.

Being satisfied that the “no plane” theory had been appropriately reflected (see further below), the ECU did not believe there was a requirement to include contributions from the suggested individuals whose accounts supported that theory, or from Pilots for 9/11 Truth, who questioned whether an inexperienced pilot or even a trained professional would have been able to execute the manoeuvre allegedly carried out by Flight 77. The ECU could not therefore uphold this point of complaint.

The ECU accepted that the programme could have interviewed those who had lost relatives on 9/11, but, in the context of the programme, could not conclude that the omission of such interviews had led to a lack of due impartiality.

For the reasons discussed above, the ECU could not conclude that there was a requirement to interview members of the 9/11 Consensus Panel, although it noted that contributor Professor Harrit was a member of that panel.

## 2.5 Bias by omission: (2) Collapse of WTC towers

The ECU noted that the fact eye-witnesses had reported hearing explosions, or what they

took to be explosions, had been reflected in the programme. Therefore the ECU could not agree that this fact had been omitted.

The ECU noted that the programme had presented several theories about why the WTC towers had collapsed, and the ECU did not agree that the fact that the cause was disputed had not been acknowledged, or that the official explanation had been presented as fact. [This consideration also applied to point 2.3 above]

In light of the Editorial Standards Committee's conclusion that the 2007 edition of the programme had reflected the mainstream "conspiracy theories", the ECU considered it reasonable to conclude that the approach of the 2011 edition to the various theories was appropriate, since it broadly mirrored that of the original. The ECU could not therefore conclude that there was a requirement to question why some evidence from the Twin Towers was allegedly not preserved or why standard investigating procedures were allegedly not followed.

The programme's narrative, together with the inclusion of extracts from *Loose Change* and Professor Harrit's explanation of the collapse of WTC7, was sufficient to ensure that viewers understood the evidence in support of the controlled demolition theory.

#### 2.6 Bias by omission: (3) Presence of thermitic material in WTC dust

The ECU concluded that it could not agree that the programme had discredited Professor Harrit or had failed to give him an appropriate opportunity to put forward his views. [This consideration also applied to point 1.3 above]

In explaining why he thought scientists had not challenged Professor Harrit, Professor Chris Pistorius described Professor Harrit's paper or conclusions as "frankly irrelevant". Viewers would have been aware that was Professor Pistorius's professional opinion. The programme had previously included a lengthy contribution from Professor Harrit, in which he set out his theory, and the programme had given the final word on the issue to Professor Harrit. This was sufficient to ensure the necessary due impartiality.

#### 2.7 Bias by omission: (4) Pentagon/American Airlines Flight 77

The programme had referred to the lack of available video footage of the Pentagon strike, and had also established that the footage that had been released was inconclusive. In the ECU's opinion, viewers would have understood that there were those who believed that the damage at the Pentagon was inconsistent with a passenger plane strike, and that video and photographic evidence had failed to show any evidence of such a plane.

The ECU could not agree that there was a requirement for the programme to question why further footage has not been released, or to include the FBI's explanation why it had not done so. Viewers would have been well aware that the footage that had been released was of poor quality and that the FBI has resisted calls to release further material, and would have been able to draw their own conclusions.

The ECU did not believe that the omission of information relating to the missile batteries protecting the Pentagon would have led to a materially misleading impression being given to the audience.

The ECU noted that the report by the National Transportation Safety Board (NTSB) into Flight 77's Cockpit Voice Recorder had found that "No undamaged or usable segments of recording tape were found in the CVR recorder". The ECU also noted that Pilots for 9/11 Truth had "concluded that the information in these NTSB documents does not support,

and in some instances factually contradicts, the official government position that American Airlines Flight 77 struck the Pentagon on the morning of September 11, 2001". However, since the programme had explained the leading theory among the 9/11 Truth Movement (i.e., that no passenger plane had hit the Pentagon), the ECU could not conclude that it was necessary to include details of a black box which was either genuine (in which case a passenger jet must have hit the Pentagon) or was in no way related to whatever did hit the building.

The programme's inclusion of contributors' sceptical comments would have ensured that viewers were aware that the 9/11 Truth Movement did not believe that a passenger plane was responsible for the damage to the Pentagon. The programme had also given due weight to the available video and photographic evidence. The programme had reflected the fact that some believed the damage had been caused by a pilotless drone or a missile, and had analysed the limited video evidence and explained that it was inconclusive. The programme had also shown photographs taken shortly after the explosion, including ones which appeared to show windows intact. One such photograph was accompanied by the soundtrack of the *Loose Change* film which questioned how a plane had hit the building without leaving any substantial wreckage on the outside. The ECU was satisfied that the "no plane" theory had been appropriately reflected, and did not believe there was a requirement to include contributions from the other eye-witnesses that complainants had suggested. The ECU could not therefore uphold this point of complaint.

Taking the comment "If a large passenger jet crashed into the Pentagon why was the hole in the exterior wall apparently so small?" in context, the presenter was clearly summarising some of the alternative theorists' concerns, and the ECU could not conclude that this was evidence of bias or that the audience would have been given the misleading impression that the hole in the Pentagon wall was not the size that it appeared to be.

The ECU did not consider the Pentagon's status as a crime scene to be relevant to a consideration of the various theories about what had happened there or elsewhere.

#### 2.8 Bias by omission: (5) United Airlines Flight 93

As the programme had not referred to the making of any mobile phone calls from Flight 93, the ECU concluded that there was no requirement to address the question of whether this was possible in 2001.

#### 2.9 Bias by omission: (6) Vested interests

While complainants regarded many contributors as biased because of their association with the establishment or the US government, that did not mean that their views should be excluded. The requirement was to ensure that contributors were appropriately and accurately described, so that the audience could judge their comments accordingly. The ECU was satisfied that this was the case.

The complainant appeared to be suggesting that all publicly funded bodies could not be independent of government control or influence, which in the ECU's view was not something which was generally accepted or acknowledged. The ECU could not agree that there was a requirement to mention that Purdue University received funding from the National Science Foundation (NSF), which was in turn funded by the US government. The ECU was unaware of any evidence that the computer simulations had been commissioned by the US government or funded by any government body. Noting that the NSF acted independently of government, and in the absence of any evidence that the university's funding had influenced the research findings, the ECU could not agree that the omission of this information would have given the audience a materially misleading impression. The

ECU also considered it important to bear in mind that the computer animation was used to illustrate the official version of events, as was made clear to viewers, and that it was not presented as definitive.

Professor Astaneh's research into the Twin Towers was sponsored by the National Science Foundation. The ECU did not believe that an individual's receipt of funding from an independent government agency was relevant information that the programme should have disclosed. Similar considerations applied to Professors Fruehan and Pistorius.

While the ECU was not in a position to assess the veracity of Allyn Kilsheimer's contribution, it could not agree that it was necessary for the programme to have referred to any links he may have had with the Department of Defense. Mr Kilsheimer's eye-witness account was far from unique: indeed, the programme had included a contribution from an FBI agent who gave a similar account. The programme's description of Mr Kilsheimer's experience, combined with the nature of what he said, was sufficient to ensure that the audience would have understood that he supported the official version of events, thereby meeting the requirement of Guideline 4.4.14:

"we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made. [emphasis added]"

The ECU could not conclude that the audience would have been given a misleading impression of Mr Kilsheimer's opinion or would have given his views undue weight, or that they would have judged his contribution in a materially different way if the programme had referred to any link he may have/had with the Department of Defense.

Having reviewed the additional information that the complainant had provided about Mr Kilsheimer, the ECU did not believe that there was sufficient persuasive evidence of any association with the Pentagon or US government departments to make it necessary for the programme to have referred to this.

#### 2.10 Bias by omission: (7) 9/11 Commission members and NIST reconsider initial findings

The ECU was not persuaded that the comments of members of the 9/11 Commission, such as Thomas Kean, Bob Kerrey et al, could be taken as proof that the official account of 9/11 had been largely discredited by panel members. While noting that certain Commission members had criticised shortcomings in the investigative process, the lack of co-operation from agencies such as the CIA, and the fact that some of the Commission's recommendations had not been adopted, the ECU was unaware of any evidence that any key or significant Commission members had questioned the Commission's over-arching findings or the version of events which it had set out. In the ECU's view, John Farmer had appeared to dismiss any suggestion that 9/11 was a government conspiracy.

The ECU was not aware that NIST had withdrawn its primary conclusions. It seemed to the ECU that the programme had provided a reasonable and accurate summary of the official explanation for the towers' collapse: it reflected NIST's explanation that fires in the towers had weakened the columns, which caused the floors to sag, which pulled the columns inwards and reduced their capacity to support the building above, as a result of which the top of the building had tilted and begun its descent.

#### 2.11 Bias by omission: (8) Suspicious deaths

The purpose of the programme was to consider specific theories relating to the events of 9/11. The ECU could not agree that there was any requirement to refer to the allegedly

suspicious deaths or that the omission of any such reference amounted to a lack of due impartiality.

## 2.12 Bias by omission: (9) Other matters that should have been addressed

In the ECU's view, the audience would have understood that the fact that a military training exercise was underway had added to the confusion and contributed to the delay in responding to the hijacking. Although the number of exercises taking place might not be considered "routine", the ECU was not persuaded that the extent of the exercise would have had a material effect on the audience's understanding.

The programme had made it clear that the military response on 9/11 was confused, and had included the allegation that the then Vice-President, Dick Cheney, had ordered the US military not to intercept the planes. The ECU could not therefore conclude that the omission of further discussion of procedural changes was material to the audience's understanding.

The ECU could not conclude that the omission of any reference to former Secretary of Transportation Norman Mineta's evidence to the 9/11 Commission had led to a lack of accuracy or due impartiality. Given that there were two contradictory interpretations of Mr Mineta's evidence, the ECU could not conclude that it was necessary for the programme to refer to this, or that the omission of any reference to Mr Mineta's evidence had led to a lack of due accuracy or due impartiality.

It was not reasonable to expect every aspect of all the various conspiracy theories about 9/11, including allegations concerning the Pakistani Secret Intelligence Service, to be incorporated into an hour-long documentary. The programme had reflected the mainstream theories about the events leading up to 9/11, what happened on the day itself and what took place in the days that followed. This was sufficient to ensure due accuracy and due impartiality.

The programme had included a comment from Alex Jones on the subject of distrusting and questioning government, followed by brief news clips of former Presidents Nixon, Clinton and Bush, and of Oliver North, which in the ECU's view gave credence and context to Mr Jones's case. The sequence was followed by a comment from Frank Spotnitz, asking where one should turn if one could not trust government leaders. The ECU regarded this as appropriately balanced. The programme had ended by offering a summary of the evidence, including a statement by the narrator that the evidence did not support the conspiracy theories. The ECU noted that the Editorial Guidelines on Impartiality allowed for programmes to provide professional judgements, rooted in evidence, and was satisfied that it was reasonable for the programme to conclude by offering a considered assessment while also including the views of those who took a different view.

The ECU was not suggesting that the copious additional information supplied by one complainant (on matters such as the number of training exercises and the influence this had on response times, changes to various protocols, the whereabouts of Donald Rumsfeld, apparent discrepancies in timings, etc) was not relevant; however, this could not have been dealt with briefly, if it were to be covered in the depth the complainant had indicated.

## 3. Harm and offence

The ECU was not persuaded that the somewhat obscured image in question would have carried the weight or influence that the complainant had suggested.



#### 4. Fairness, contributors and consent

The manner in which an interview was conducted fell beyond the ECU's remit, which was limited to the material that was included in the final programme. The ECU noted in passing that the programme had included a number of lengthy contributions from Professor Harrit, in which he expressed his theory on the collapse of WTC7 and commented on how this had been received. The programme had not included any comments by Professor Harrit on broader issues about the events of 9/11.

The ECU was not persuaded that the depiction of Mr Avery and his colleagues had given the impression that they were motivated by commercial gain rather than a commitment to challenging the official version of what had happened on 9/11, and could not agree that the programme had sought to discredit them.

The ECU disagreed that the programme's conclusion had presented those who questioned the official version of events as heartless individuals. In the closing moments of the programme, both Alex Jones and Professor Harrit had explained why they continued to put forward their theories. The programme had ended by suggesting that any continued uncertainty would be distressing to the victims' families, which the ECU considered to be a reasonable conclusion, regardless of what version of events one believed.

#### 5. War, terror and emergencies

The ECU did not make any express findings in respect of this section of the Guidelines. It was, however, implicit in its other findings that the ECU was satisfied that, in all the circumstances, the requirements of due accuracy had been met.

#### 6. Editorial integrity and independence from external interests

The ECU did not make any express findings in respect of this section of the Guidelines, as complainants had framed their complaints in terms of breaches of the Royal Charter and Agreement, which set out the constitutional basis of the BBC and which were therefore beyond the ECU's remit.

### **Appeals to the Trust**

Complainants appealed against the ECU's decision across the whole range of issues that had been raised at Stages 1 and 2. In addition, complainants raised the following point of complaint: Accountability.

One complainant queried why the ECU had limited its investigation to issues of impartiality. Another complainant noted that the ECU had considered this complaint against the Editorial Guidelines on accuracy and impartiality, whereas in the complainant's view it concerned a regulatory matter. The same complainant argued that it would be "dishonourable" for the Trust to limit its consideration of this complaint solely to the Editorial Guidelines, as the issues were too important.

The ECU explained that its remit was limited to editorial matters, which was why it had considered complaints against the standards prescribed by the Editorial Guidelines.

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 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 Head of Editorial Standards considered complainants' appeals against the Editorial Guidelines on (1) Accuracy, (2) Impartiality, (3) Harm and Offence, (4) Fairness, Contributors and Consent, (5) War, Terror and Emergencies, (6) Editorial Integrity and Independence from External Interests, and (7) Accountability.

### 1. Accuracy

The Head of Editorial Standards noted that the programme was an updated version of one of a series which had sought to give audiences an overview of the phenomenon of the conspiracy theory. She also noted that certain issues relating to accuracy had already been decided upon by the ESC in its decision on the 2007 edition, and that those findings therefore also applied to the corresponding elements of the 2011 edition.

So far as issues of accuracy not covered by the ESC's decision were concerned, the Head of Editorial Standards adopted the ECU's findings, and felt there was little she could usefully add to its analysis, which she considered to be thorough, detailed and fair-minded. In her view, there was insufficient evidence that any appeal had a reasonable prospect of success on the ground that the programme was inaccurate and/or misleading. Nor did the Head of Editorial Standards consider it to be appropriate, proportionate or cost-effective for the Trust to address any appeal on accuracy issues.

The Head of Editorial Standards noted that the ECU had not expressly referred in its findings to certain allegations of inaccuracy that complainants had made. Although the ECU had implicitly rejected those points of complaint, the Head of Editorial Standards took the view that, for the sake of completeness, she should address them in this letter.

#### 1.1 General

With regard to the complaint that the programme makers had knowingly misled the audience, the Head of Editorial Standards noted that, as the ECU had found that the programme was duly accurate (with which she felt the Trustees would agree), this complaint necessarily fell away.

#### 1.2 Collapse of World Trade Center (WTC) towers

With regard to the BBC's having reported the collapse of WTC7 20 minutes before it actually happened, the Head of Editorial Standards noted that the ESC had previously decided that BBC World's Head of News had satisfactorily explained the sequence of events.

#### 1.8 Other issues

With regard to the report that five of the alleged hijackers were alive, the Head of Editorial Standards noted that a blog by the Editor, BBC News website had explained that the confusion over names and identities may have arisen because the names in question were common Arabic and Islamic names.

She also noted that the blog had quoted the FBI's statement that it was confident that it had positively identified the hijackers, and that the 9/11 investigation had been

thoroughly reviewed by the National Commission on Terrorist Attacks Upon the United States and the House and Senate Joint Inquiry, neither of which had raised doubts about the hijackers' identities. In the Head of Editorial Standards' view, Trustees would not agree that the omission of this relatively minor point had any significant bearing on the accuracy (or, for that matter, the impartiality) of the programme.

## 2. Impartiality

### 2.1 General bias

The Head of Editorial Standards noted that, according to the Editorial Guidelines, due impartiality was often more than a matter of balance between opposing viewpoints, and that it did not require absolute neutrality on every issue or detachment from fundamental democratic principles. She also noted that, according to the Guidelines: impartiality did not necessarily require the range of perspectives or opinions to be covered in equal proportions, either across the BBC's output as a whole, or within a single programme, web page or item; that views should be accorded their "due weight"; and that minority views should not necessarily be given equal weight to the prevailing consensus.

The Head of Editorial Standards said she was aware of all appeals received on this issue since 2007. None had been upheld and the Head of Editorial Standards therefore found no evidence that the BBC's output on 9/11 had failed to consider the broad perspective or to ensure that the existence of a range of views had been appropriately reflected. Nor was there any evidence, in her view, that the BBC's application of due impartiality had not been adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that might have influenced that expectation.

She therefore concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

### 2.2 Bias by inaccuracy

As the Head of Editorial Standards determined that the programme was duly accurate, this point of complaint necessarily fell away.

### 2.3 Biased depiction of competing theories

The Head of Editorial Standards noted that the ESC had previously found that, considering the difficulty and complexity of the programme's subject matter, the 2007 edition of the programme had provided a fair and open-minded presentation of the various theories and had met the Guidelines' requirements on due impartiality.

Also noting that all contributors to the 2011 edition (except Dylan Avery) had confirmed that their original contributions accurately reflected their current views, the Head of Editorial Standards agreed with the ECU that the programme's depiction of the various conspiracy theories had been appropriate, since it broadly mirrored that of the original programme.

With regard to complainants' specific complaints of biased depiction, the Head of Editorial Standards adopted the ECU's findings, and felt there was little she could usefully add to its analysis.

She therefore concluded that there was insufficient evidence to suggest that any appeal

had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

#### 2.4 Bias by omission

Issues concerning the selection of programme content required the Head of Editorial Standards to consider the crucial distinction between the respective roles of the BBC Trust and the BBC Executive Board. Article 7 of the BBC's Royal Charter states:

"... the main roles of the Trust are in setting the overall strategic direction of the BBC, including its priorities, and in exercising a general oversight of the work of the Executive Board. The Trust will perform these roles in the public interest, particularly the interest of licence fee payers. The Executive Board has responsibility for delivering the BBC's services in accordance with the priorities set by the Trust and for all aspects of operational management ..."

Article 9(3) of the Royal Charter states:

"...the Trust must not exercise or seek to exercise the functions of the Executive Board."

Article 38(1)(b) of the Royal Charter states:

"The Executive Board ... is responsible for ... the direction of the BBC's editorial and creative output."

In the Head of Editorial Standards' view, the programme makers' exercise of their editorial judgement in relation to the scope of the programme and the choice of contributors concerned the direction of the BBC's editorial and creative output, and was consequently a matter in which the Trust could not involve itself – unless, exceptionally, the exercise of that editorial judgement had given rise to a specific breach of the Editorial Guidelines, or to a regulatory issue.

The Head of Editorial Standards therefore went on to consider whether the scope of the programme (i.e., the breadth and depth of its coverage of competing theories) or the choice of contributors had given rise to any potential breach of the Impartiality Guidelines. She noted that, with regard to the choice of contributors and arguments in the 2007 edition, the ESC had stated:

"As to the choice of contributors, the Committee was satisfied that the programme had provided appropriate and relevant representatives from both sides of the argument to articulate the various views.

The Committee recognised that with such contentious views being presented not every viewer would be pleased with the choice of contributors. Nevertheless, the Committee was satisfied, having considered the programme as a whole, that the various arguments of the theories highlighted had been sufficiently articulated to ensure that the lay viewer would have been provided with enough information to have had a basic understanding of the arguments for each of the theories presented.

The Committee, while it accepted that the individual complainants did not necessarily agree with the choice of representative for their views, was satisfied that the production team had ensured that the contributors had appropriate credentials to provide an authoritative view of the conspiracy theorists'

arguments.”

The Head of Editorial Standards also noted that the ratio of contributors who favoured the official version of events to those who preferred alternative theories was approximately the same in the 2011 edition (15:4 respectively, according to one complainant) as in the 2007 edition (13:3 respectively, according to one complainant). In her view, the programme had set out to present the leading and most popular alternative theories, not to adjudicate upon the veracity of any of the competing versions of events or to conduct an exhaustive forensic inquiry into 9/11. In her view, this was a legitimate exercise of editorial judgement. So far as the selection of contributors and arguments was concerned, as the 2011 edition broadly matched the 2007 edition in this regard, she considered that the ESC’s finding (i.e., that there had been no breach of the Impartiality Guidelines in this regard) was equally applicable in this instance.

The Head of Editorial Standards also took the view that there was no evidence to suggest that the programme makers’ exercise of their editorial judgement had given rise to any regulatory issue, and therefore concluded that this was not a matter in which the Trust could involve itself.

### 3. Harm and offence

With regard to the allegation that the programme had contained an image of very brief duration which the complainant perceived to be a mockery of alternative theorists’ arguments, the Head of Editorial Standards noted that, as well as potentially engaging the Editorial Guidelines on Harm and Offence, this issue potentially concerned clause 46(2)(a)(v) of the BBC Agreement with the Secretary of State, which referred to the provisions of section 319(2)(l) of the Communications Act 2003, as follows:

#### 46. Programme Code Standards

...

(2) “Relevant Programme Code Standards” means those standards for the time being set under section 319 of the Communications Act 2003—

(a) which relate to the objectives set out in the following paragraphs of subsection (2) of that section, that is to say—

...

(v) paragraph (l) (refraining from use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred), but  
(b) only to the extent that they do not concern the accuracy or impartiality of the content of any programme included in the UK Public Broadcasting Services.

The Head of Editorial Standards explained that an independent editorial adviser had viewed the programme and captured six frames of the image in question. The image appeared at the beginning of the programme as one of a succession of brief images relating to 9/11. The Head of Editorial Standards noted that the complainant had reproduced just the right-hand portion of the image in question, which in her view did not give an accurate sense of what the whole image conveyed. The complainant had also reproduced just one frame of the image, which had similarly failed to convey the fact that the image was not static, but dynamic.

In the Head of Editorial Standards’ view, the image in question, while admittedly being indistinct, bore no resemblance to a horse or to any part thereof. She therefore concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to

the ESC.

#### 4. Fairness, contributors and consent

In order to establish a potential breach of the Fairness Guidelines, a complainant must show that they had personally been treated unfairly (since the BBC will only consider first party fairness complaints – this is referred to in the Editorial Complaints Procedure).

As the alleged unfairness did not concern any of the complainants personally, the Head of Editorial Standards took the view that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

Although it was not necessary for the Head of Editorial Standards to express a view on this point, she wanted to point out that programmes' compliance with editorial standards was to be judged according to what had actually been transmitted, not what had allegedly been left out. With regard to the complaint concerning Professor Harrit, the Head of Editorial Standards felt the Trustees would agree that he had been given ample opportunity to express his views. She also felt the Trustees would agree with the ECU that the programme had not implied that Mr Avery and his colleagues were motivated merely by commercial gain, and had not depicted alternative theorists as "heartless individuals". For these reasons, she concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

#### 5. War, terror and emergencies

The Head of Editorial Standards felt that the programme had not only been duly accurate, but that it had also scrupulously applied the principles of accuracy and impartiality in covering an international emergency (see above for why she thought the Trustees would not find any breaches of the Accuracy and Impartiality Guidelines). She therefore concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on the grounds of breaching the guidelines on war, terror and emergencies, or that it would be appropriate for any appeal to proceed to the ESC.

#### 6. Editorial integrity and independence from external interests

The Head of Editorial Standards noted that, according to the Editorial Guidelines, the BBC's reputation, in the UK and around the world, was based on its editorial integrity and independence. The Guidelines stipulated that audiences must be able to trust the BBC and be confident that its editorial decisions were not influenced by outside interests, political or commercial pressures, or any personal interests. The Head of Editorial Standards also noted that the BBC must be independent from outside interests and arrangements which could undermine its editorial integrity.

In the Head of Editorial Standards' view, the complainants had not adduced sufficient evidence in support of a breach of this section of the Guidelines, other than the general allegation, unsupported by any further particulars or evidence, that the BBC had received money from the US State Department. She therefore concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

The Head of Editorial Standards' response to complainants' analogous arguments in relation to the BBC's Royal Charter and Agreement are set out under heading 8, "Regulatory issues", below.

## 7. Accountability

As the ECU had explained, its remit was limited to editorial matters, and it was therefore constrained from considering complaints concerning general bias or regulatory matters. The Head of Editorial Standards noted that the ECU had summarised complaints, had informed complainants of the Editorial Guidelines against which complaints would be considered, and had invited complainants to comment on its approach. She also noted that no complainant had expressed any dissatisfaction with the ECU's interpretation of its remit until after the ECU had issued its findings.

The fact that, in reaching this decision, the Head of Editorial Standards had considered other Guidelines besides those considered by the ECU, and had also considered the regulatory issues that complainants had raised, did not imply that the ECU's investigation had been unduly narrow, but rather that the ECU and the Trust had different remits and approaches.

For these reasons, the Head of Editorial Standards concluded that there was insufficient evidence to suggest that any appeal had a reasonable prospect of success on this ground, or that it would be appropriate for any appeal to proceed to the ESC.

## 8. Regulatory issues

The Head of Editorial standards noted complainants' arguments that, notwithstanding the provisions of Article 6(1) of the BBC's Royal Charter (which asserts the BBC's independence in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs), the BBC was not in fact truly independent. In support of this proposition, they cited clauses 4 and 81 of the BBC Agreement which, they argued, effectively made it an instrument of Government.

In the Head of Editorial Standards' view, it did not follow that the BBC was not truly independent of Government merely because the BBC's independence was subject to certain constraints and voluntarily-assumed obligations which restricted, to some extent, its future freedom of action. The Head of Editorial Standards noted that clause 81 of the Agreement was entitled "Defence and Emergency Arrangements", that the application of its provisions was restricted to certain exceptional circumstances, and that, if clause 81 were ever to be invoked, the BBC would be permitted to acknowledge that its editorial independence had been compromised, by making an announcement to that effect.

The Head of Editorial Standards noted that many sovereign bodies voluntarily accepted restrictions on their future freedom of action, or effectively ceded or delegated their sovereignty to other entities for certain specific purposes, without compromising or forfeiting their essential sovereignty.

The Head of Editorial Standards also noted that, like any other organisation or individual, the BBC's autonomy was also constrained by its duty to comply with the law. In her view, the voluntary constraints on the BBC's autonomy did not compromise its essential independence.

In the Head of Editorial Standards' view, there was no evidence that the BBC was engineering acquiescence with the official version of events and thereby allowing itself to be used as a vehicle for US Government propaganda. Nor was there any evidence to support the allegation that the BBC had knowingly kept the public misinformed in order to gain support for war in Afghanistan, or indeed anywhere: in her view, the complainants had failed to adduce sufficient evidence that the BBC was failing to support informed



democracy, as referred to in the previous Trust Chairman's preface to Editorial Guidelines. The Head of Editorial Standards was not persuaded that it was necessary for the purposes of supporting informed democracy for the BBC to have re-broadcast *Timewatch – Operation Gladio*. In any event, the scheduling of programmes concerned the operational management of the BBC, and was by the application of Article 38(1)(c) of the Royal Charter a matter for the Executive Board, not the Trust.

For these reasons, the Head of Editorial Standards concluded that there was insufficient evidence to suggest that there were any regulatory issues for the Trustees to consider.

### **ESC review request**

Three complainants requested that the Committee review the decision of the Head of Editorial Standards not to proceed with their appeals.

The first referred to the wide support among MPs and others for his complaint. He said that the BBC had failed to mention arguably the most important piece of scientific evidence showing that WTC7 was brought down by controlled demolition. He said this was a breach of the Royal Charter and Agreement. He reiterated the view that the BBC had also failed to correct a previous error in 2007 relating to the collapse of WTC7. The complainant said that, given public opinion about 9/11 was split, the BBC should have presented evidence from both sides.

The second and third complainant reiterated their allegations about the biased and inaccurate nature of the BBC's coverage of 9/11 and said there was wide support for their complaints.

### **The Committee's decision**

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

#### 1. Accuracy

The Committee noted that the programme was an updated version of one shown originally in 2007, and that certain issues relating to its accuracy had already been decided upon by the Committee when it considered that programme under the Editorial Guidelines that were in force at the time (the 2005 Editorial Guidelines). The Committee agreed that it would have reached the same decision in respect of the 2007 edition of the programme under the new Editorial Guidelines that are currently in force (the 2010 Editorial Guidelines), and that therefore its findings in respect of the 2007 edition of the programme also applied to the corresponding elements of the 2011 edition of the programme.

With regard to the points not covered by the previous ESC decision, the Committee noted the arguments put forward by the complainants. The Committee also noted the detailed response to each of these points which had been given by the Editorial Complaints Unit at Stage 2 of the process. The Committee agreed with the Head of Editorial Standards that the ECU's response to the complaint had been thorough, detailed and fair-minded. The Committee agreed there would be no reasonable prospect of success for an appeal on the basis of a breach of the Accuracy Guidelines.

#### 2. Impartiality



The Committee agreed that, as it did not consider that there was a reasonable prospect of success for an appeal on the grounds of a breach of accuracy, there was equally no prospect of success for an appeal which alleged a breach of the Impartiality Guidelines resulting from inaccuracy.

With regard to the numerous allegations of bias by omission which had been made by complainants, the Committee noted that the programme makers' exercise of their editorial judgement in relation to the scope of the programme and the choice of contributors concerned the direction of the BBC's editorial and creative output. The Committee noted that this was a matter which the Trust could not involve itself – unless, exceptionally, the exercise of that editorial judgement had given rise to a specific breach of the Editorial Guidelines or to a regulatory issue.

The Committee noted the previous ESC finding in relation to the 2007 edition of the programme. The Committee was mindful that it was previously satisfied, having considered the programme as a whole, that the various arguments of the theories highlighted had been sufficiently articulated to ensure that the lay viewer would have been provided with enough information to have had a basic understanding of the arguments for each of the theories presented. The Committee agreed that, while this decision was made under the 2005 Editorial Guidelines, it would have reached the same decision in respect of the 2007 edition of the programme under the 2010 Editorial Guidelines. The Committee also agreed that, as the selection of contributors and arguments in the 2011 edition broadly matched the 2007 edition, the ESC's previous finding (i.e., that there had been no breach of the Impartiality Guidelines in this regard) was equally applicable in this instance. The Committee agreed that there was insufficient evidence to suggest that the programme makers' exercise of their editorial judgement had given rise to any regulatory issue, and therefore concluded that this was not a matter in which the Trust could involve itself.

The Committee agreed that, as it had determined that there was not a reasonable prospect of success for an appeal on the basis of inaccuracy, there could be no reasonable prospect of success for an appeal on the basis of bias by inaccuracy.

The Committee noted that complainants had alleged that the programme was biased in its depiction of competing theories. In this respect the Committee noted the previous ESC finding on the 2007 edition of the programme, which said the programme had provided a fair and open-minded presentation of the various theories and had met the Guidelines' requirements on due impartiality. The Committee agreed that it would have reached the same decision in respect of the 2007 edition of the programme under the 2010 Editorial Guidelines. The Committee noted that all but one of the contributors to the 2011 edition of the programme had confirmed that the original contributions accurately reflected their views. The Committee agreed that the programme's depiction of the various conspiracy theories had been appropriate, since it broadly mirrored that of the original programme. The Committee noted that the Trust's Head of Editorial Standards had adopted the ECU's findings on the complainants' specific allegations of biased depiction. It agreed that the ECU's response had been detailed and fair-minded, and concluded that there was no reasonable prospect of success for an appeal on the basis of biased depiction of competing theories.

With regard to the allegations of general bias, the Committee noted the points that the complainants had made in support of their contention that the programme had not been impartial. The Committee agreed that due impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions, either across the BBC's output as a whole, or within a single programme. The Committee noted that not

one appeal on the issue of 9/11 coverage received since 2007 had been upheld. The Committee agreed that there was insufficient evidence to support the claim that the BBC's output on 9/11 had failed to consider the broad perspective or to ensure that the existence of a range of views had been appropriately reflected expectation.

### 3. Harm and Offence

The Committee noted the allegation that an image which the complainant had taken to represent a "horse's ass" had been shown briefly at the start of the programme. The Committee noted the six frames in which the image appeared. The Committee noted that it was impossible to say with certainty what that image represented, and it was not persuaded by the argument that a depiction of any part of a horse was intended by the programme makers. The Committee therefore concluded that there was no reasonable prospect of success for an appeal on the basis that there was an intention to subliminally influence viewers.

### 4. Fairness, contributors and consent

The Committee noted that the alleged unfairness in the programme did not concern any of the complainants personally. The Committee agreed that it would normally only consider "first party" fairness complaints and, therefore, it was not appropriate to take the appeal on this basis.

The Committee noted that, nonetheless, the Head of Editorial Standards had considered the allegation of unfairness to Professor Harrit and had concluded that he had been given ample time to express his views. The Committee also noted that the Head of Editorial Standards had considered the allegation of unfairness to Mr Avery and his colleagues and had concluded that the programme had not implied that they were motivated by commercial gain, and had not depicted alternative theorists as "heartless individuals".

### 5. War, terror and emergencies

Given that it had concluded that there was no reasonable prospect of success for an appeal on the basis that the programme had breached the Accuracy and Impartiality Guidelines, the Committee agreed that there would be no reasonable prospect of success for an appeal on the basis that the specific requirements of the Guidelines on war, terror and emergencies had been breached.

### 6. Editorial integrity and independence from external interests

The Committee noted the Head of Editorial Standards' view that complainants had not adduced sufficient evidence in support of any breach of this section of the Guidelines, other than the general allegation, unsupported by any further particulars or evidence, that the BBC had received money from the US State Department.

The Committee agreed that this was insufficient evidence to conclude that there was a reasonable prospect of success for an appeal on the basis that the BBC's editorial integrity and independence from external interests had been compromised.

### 7. Accountability

The Committee noted that appeals to the Trust had included complaints about the decision of the ECU not to consider certain elements of the complaints which fell outside its remit. The Committee noted that the Trust's Head of Editorial Standards had

considered the issues not covered in the ECU response in her reply to the appeal requests. The Committee agreed that this did not imply that the ECU's investigation had been unduly narrow, but rather that the ECU and the Trust had different remits and approaches.

The Committee agreed that there was no reasonable prospect of success for an appeal on the basis that the handling of the complaints had been flawed.

The Committee noted that the three complainants who challenged the decision of the Head of Editorial Standards not to accept the appeal, had referred to the level of wider support for their complaints.

The Committee was mindful that its consideration was whether there was a reasonable prospect of success for the allegations made by complainants on appeal, and that the relevant considerations were the same irrespective of the number or background of the complainants involved, or any wider support claimed by those complainants. The Committee noted that there were many who felt very strongly that certain arguments should have been included in the programme. The Committee considered that it would be impossible to make a programme which satisfied everybody who held a view on the events of 11 September 2001. However, it was satisfied that the BBC had demonstrated in its responses to the complaints that an appropriate range of views and opinions had been included in the programme.

#### 8. Regulatory issues

The Committee noted that complainants had alleged that the BBC was not truly independent of government, citing clauses 4 and 81 of the BBC Agreement. The Committee noted the Head of Editorial Standards' view that it did not follow that the BBC was not truly independent of government merely because the BBC's independence was subject to certain constraints and voluntarily-assumed obligations which restricted, to some extent, its future freedom of action.

The Committee noted that the application of clause 81 of the Agreement (entitled "Defence and Emergency Arrangements") was restricted to certain exceptional circumstances, and that, if clause 81 were ever to be invoked, the BBC would be permitted to acknowledge that its editorial independence had been compromised, by making an announcement to that effect.

The Committee agreed that there was no persuasive evidence that the BBC was engineering acquiescence with the official version of events and thereby allowing itself to be used as a vehicle for US Government propaganda, as claimed by complainants. The Committee also agreed that there was similarly no evidence to support the allegation that the BBC had knowingly kept the public misinformed in order to gain support for war in Afghanistan, or indeed anywhere.

The Committee noted the complaint concerning the absence in the scheduling of the previously broadcast BBC programme *Timewatch – Operation Gladio*. The Committee agreed that the scheduling of programmes concerns the operational management of the BBC, and was by the application of Article 38(1)(c) of the Royal Charter a matter for the Executive Board, not the Trust.

The Committee agreed that there was insufficient evidence to suggest that there were any regulatory issues to be considered on appeal.

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

## ***9/11: Conspiracy Road Trip, BBC Three, 8 September 2011***

Two complainants appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that their appeals did not qualify to proceed for consideration by the Committee.

### **Summary of complaints**

The following summary covers points made by all those who complained about this programme, including the two complainants who challenged the Head of Editorial Standards' decision. In accordance with the Editorial Complaints and Appeals Procedure, the Trust Unit consolidated appeals received on the subject of *9/11: Conspiracy Road Trip* and considered them together across the range of issues raised.

Complainants argued that *9/11: Conspiracy Road Trip* was inaccurate, misleading and biased, in the following respects.

#### The programme's approach

Complainants said that the programme had not taken a balanced and impartial view in considering what had happened on 9/11; the presenter had stated that he knew what had happened, and had dismissed those in the programme who were sceptical of the official version of events.

Complainants said that the programme had made it clear from the start that its approach was not open-minded, and had taken the view that those who doubted the official version of events were delusional.

#### Choice of participants

Complainants said that the programme had deliberately chosen five young people who did not have the knowledge or experience to be able to counter technical opinion put forward by the programme's experts.

#### Choice of content

The programme had not included a contribution from Richard Clarke (then National Co-ordinator for Counter-Terrorism) in relation to the role of the CIA. Complainants said that Mr Clarke had stated that the CIA had taken a deliberate decision to withhold intelligence from the FBI. Complainants alleged that the omission of this information had led to a lack of due impartiality, and had given viewers a misleading impression about the CIA's alleged complicity in the 9/11 attacks.

The explanation of how the North (WTC1) and South (WTC2) Towers (the Twin Towers) of the World Trade Center (WTC) had collapsed had not included a contribution from an engineer from the 9/11 Truth Movement, to offer an alternative theory.

The programme had not included the admission by the National Institute of Standards and Technology (NIST) that WTC Tower 7 (WTC7) had fallen at free fall speed for at least 2.25 seconds. Complainants said the omission of this information was crucial, alleging that the only way in which such a building could collapse at free fall speed was through controlled demolition, using explosives.

The programme had made no mention of molten iron found under the WTC towers for weeks after 9/11, and had offered no explanation for it. Complainants said that, even in ideal circumstances, office fires and jet fuel could not reach the temperatures required to melt steel. Complainants claimed that there had to be a high energy substance, such as thermite, present in large quantities to achieve this.

### Validity of demonstrations

Complainants said that the demonstration to show that thermite could not have been used to demolish the WTC towers was flawed and misleading. They said it did not draw on evidence available from Architects and Engineers for 9/11 Truth (9/11 Truth Movement), an organisation that disputes the official version of events and is seeking a new independent investigation into the events of 9/11, which complainants said showed how thermite could have been used.

Complainants also said that the demonstration to show that a person with no flying experience could pilot a four-engine Boeing 767-200 airliner was flawed; it did not reflect the view of qualified airline pilots that even an experienced pilot could not have flown a passenger plane into the Twin Towers or Pentagon in the manner described in the official account.

Complainants said the programme had also omitted to mention radar tracking information which allegedly shows that flights which hit WTC1 and WTC2 were travelling at speeds well in excess of the aircraft's capabilities.

## **Summary of the Editorial Complaints Unit's findings (stage 2 of the complaints process)**

### The programme's approach

In the ECU's view, the programme had not taken a traditional approach to the subject. The presenter had set out to see if he could change the minds of five people who did not believe various aspects of the official version of the events of 9/11. Viewers would have been aware that the presenter supported the official version, but that the five people on the road trip all had doubts or concerns and believed there were alternative explanations. Being fully aware of the presenter's and participants' particular points of view, the audience would, in the ECU's view, have judged their contributions accordingly. The ECU could not agree that this approach had led to a lack of due impartiality. The programme had given each of the five people on the road trip the opportunity to set out their theories, and had included their response to the presenter's attempts to change their mind.

The programme was not an attempt to analyse each and every theory about 9/11, nor was it a typical investigative-style documentary weighing the evidence for and against various theories. Due impartiality did not require a consideration of issues that were not relevant to a programme's subject matter or approach. Viewers would have been aware from the outset that the presenter had a clear view about what he thought had happened on 9/11 and who was responsible. The programme's premise had been clearly established at the start, and the audience would have been in little doubt that the presenter's aim was to challenge the five participants' views and to persuade them to share his way of thinking.

In the ECU's opinion, it was reasonable for the presenter to express his views on the various conspiracy theories and on those who held such views, just as it was reasonable

for the programme to include the contrasting views of the five people on the road trip. Viewers would have understood that the premise of the programme was to see whether the presenter was able to change the five participants' minds, and would have judged the content accordingly. The ECU noted that the Editorial Guidelines recognise that there may be occasions when it is acceptable to allow contributors to express views which might be regarded by some as contentious, as the section of the Impartiality Guidelines concerning Personal View Content makes clear.

#### Choice of participants

In the ECU's view, it is a matter of editorial discretion for programme makers to choose their programmes' subject and approach. In this case, the audience would have been well aware that this was a programme where a comedian sought to challenge the views of five young people who did not believe the official version of events. The programme could have chosen five people with technical expertise or knowledge, but that would have resulted in an entirely different programme. The nature of the programme had been clearly set out: the five people on the road trip were ordinary individuals who found aspects of the official version hard to accept, and the presenter was trying to convince them that they were wrong. Viewers would have judged the programme's content accordingly.

#### Choice of content

As none of the five people on the road trip had raised concerns about the role of the intelligence agencies, the ECU could not conclude that there was a requirement to refer to the CIA's role and to have included contributions from those, such as Richard Clarke, who believed that the CIA had withheld intelligence from the FBI.

The Editorial Guidelines do not require the inclusion of every point of view or perspective in an individual programme. Due impartiality has to be judged against a programme's particular nature and content. In this case, the five people on the road trip had been given the opportunity to explain their concerns, and the presenter had sought to present evidence to challenge their views. While the programme could have taken a different approach, its chosen approach was clearly explained to the audience at the start, and it was on that basis that the ECU had to consider this complaint. The ECU did not conclude that the programme should have included a contribution from a member of Architects and Engineers for 9/11 Truth or have conducted a detailed analysis of what had caused WTC7 to collapse. The programme had given the five people on the road trip the chance to question a demolition expert about the Twin Towers, and had included his response and their reaction.

The ECU noted that the sequence concerning the controlled demolition theory had begun with a contribution from mechanical engineer Tony Szamboti. This had established that there were engineers, published in professional journals, who believed that the WTC towers had been brought down by controlled demolition and that thermite could have been used. Mr Szamboti's citation of evidence which he said supported this theory had, in the ECU's view, gone some way towards addressing concerns about the omission of any reference to the position of members of Architects and Engineers for 9/11 Truth.

As none of the five people on the road trip had raised the collapse of WTC7 as a concern, it was not necessary for the programme to have referred to the NIST's conclusion that WTC7's north face had fallen at gravitational acceleration for part of the period of the tower's collapse.

In relation to the argument that *The Conspiracy Files: 9/11* (broadcast in February 2007)



had incorrectly claimed that WTC7 had not collapsed in free fall, and that the updated 2011 edition thereof and *9/11: Conspiracy Road Trip* should have corrected that error, the ECU explained that its remit only extended to considering whether there was a serious breach of editorial standards in particular programmes. The ECU was therefore not in a position to consider whether *9/11: Conspiracy Road Trip* should have included a correction of an alleged error in a programme that had been broadcast five years earlier.

As none of the five people on the road trip had raised concerns about the presence of molten iron under the three WTC towers, the ECU could not conclude that there was a requirement to consider this point in this programme. The ECU noted that the video cited in support of the complainant's argument appeared to show that, whereas some people had said that they had seen pools of molten steel, NIST had not accepted this. Furthermore, the ECU noted that the NIST report had found no corroborating evidence for alternative hypotheses suggesting that the WTC towers were brought down by controlled demolition using explosives planted prior to 11 September 2001.

### Validity of demonstrations

In the ECU's view, the thermite demonstration had been clearly presented as a DIY chemistry experiment. The ECU acknowledged that it may well be that thermite packed in small steel containers could have a more damaging effect, and that the video cited in support of the complainant's argument appeared to show that, contained in a specific way, thermite could burn through or seriously weaken steel girders. However, the ECU could not conclude that the evidence of one DIY experiment should be given significantly more weight than another.

The ECU accepted that the flying demonstration was far from scientific, and did not prove one way or the other whether the planes that had hit the Twin Towers were piloted by terrorists. However, the ECU thought it reasonable to assume that viewers would have judged what they saw accordingly, and would have drawn their own conclusions. The programme had reflected the view of a qualified flight instructor that a relatively inexperienced pilot could have flown a plane into the Twin Towers, and had also included Charlotte's (one of the five people on the road trip) response, in which she made it clear that she was still not persuaded. The ECU noted that the programme had not included the kind of informed comment that complainants considered necessary (e.g. a contribution from a member of Pilots for 9/11 Truth), or any reference to the speed of the planes which hit the Twin Towers, but concluded that there was no requirement to include this information: the programme had a clearly defined but limited scope, and was not seeking to examine all aspects of the various theories surrounding 9/11. In the ECU's view, the programme had achieved the necessary due impartiality, when judged against its subject and content.

### **Appeal to the BBC Trust**

Two complainants escalated their complaints to the BBC Trust, making the following arguments:

- The programme had been intentionally produced from the point of view of the host, who strongly believed that the official version of events was correct and whose aim was to change the five participants' minds. This approach was biased.
- If public scepticism were limited to a small, fringe minority, such an approach might be more acceptable; however, as the BBC had reported, one third of the public did not believe the official story, and world-wide evidence suggested this figure was even higher.

- The unbiased approach would have been to present and discuss both sides with equal emphasis.
- The BBC should seek to challenge the flaws in the official version of events, rather than casting personal aspersions against those who questioned it.
- The programme had presented only the orthodox perspective. The complainant queried the absence of a balancing programme in which a presenter who disbelieved the official story attempted to change the minds of five participants who believed it was correct.
- If (as the ECU had stated) the programme was not an investigative documentary, what was it?
- It should have been clearly indicated at the start of the programme that the BBC did not endorse any of the views expressed therein. The producers should have let the presenter argue his own case, instead of providing a variety of experts to give evidence for his views.
- The programme's format was that of a documentary, and hence the content should have been checked thoroughly to ensure the highest standards of factual accuracy and balance. Given the dearth of accurate information in the mainstream media, how could viewers make balanced decisions if they were never made aware of the real facts?
- The ECU appeared to be arguing that, so long as an expert could be found to present a contrary view, it did not matter whether that view was factually inaccurate. The Editorial Guidelines on Accuracy require that, in arguing a case as sensitive and complicated as the building collapses on 9/11, the BBC should have provided at least an additional expert to balance the views expressed.
- The statements made by the demolition expert were wrong on basic levels. The main function of a buildings structure is to counteract gravity. This was achieved by making structural supports at least several times stronger than was necessary. The centre of the building was the path of most resistance, but, according to the expert, the top section had fallen directly through it at nearly free fall speed and in defiance of several laws of physics, including the law of conservation of momentum.
- The public relied on the BBC to select suitable experts to supply accurate programme content. Experts who promoted impossible scenarios should be balanced with other experts who were qualified to question them. It was not acceptable for the BBC to assume that viewers had sufficient knowledge to identify the flaws in expert testimony. In this aspect, as with most of the programme, the BBC was guilty of wilfully misleading the public in order to facilitate a political objective.
- The NIST report had stated that WTC7 had collapsed in free fall (gravitational acceleration) for at least 2.25 seconds. Free fall was impossible for a gravitational collapse, as NIST Lead Investigator Dr Shyam Sunder had stated in August 2008.
- Very simple facts could be used to prove the official story wrong:
  - WTC7 had fallen for 2.25 seconds in free fall.

- For any object to fall in free fall, all available potential energy must be converted into kinetic energy. No energy is available to perform any additional work.
  - Therefore there must have been an additional source of rapidly applicable, controllable energy available to destroy thousands of welded and bolted connections, buckle and deform steel members and pulverise concrete to very fine dust.
  - The only possible type of additional energy source capable of providing sufficient energy in the rapid, controlled method required was explosives.
  - It takes months to prepare the explosives needed to destroy a 47-storey, steel-framed skyscraper.
- Given the kind of tenants in WTC7, it was very unlikely that al-Qaeda could have had sufficient access to plant explosives, so at the very least the official story could not be correct and, at worst, elements of the US government were involved.
- The same laws of physics were the reason why a stone thrown into a pool falls more slowly than in air. WTC7 was scientific proof that the official story for 9/11 could not be true.
- The programme had said that the five persons on the road trip were interested in all aspects of the events of 9/11. The exclusion of WTC7 appeared to have been deliberate and the result of bias.
- The presence of molten iron should have been mentioned, as it was impossible for office or jet fuel fires to reach the temperatures required to melt steel. Either the five persons on the road trip lacked sufficient knowledge of the molten metal (which was widely known about and documented in the 9/11 Truth Movement), or the programme makers had chosen to ignore it. Either alternative showed clear bias towards a set objective, which breached the Editorial Guidelines on Impartiality and Accuracy.
- The ECU had cited Tony Szamboti's brief contribution as evidence of balance in the question of the thermite experiment. Had Mr Szamboti been asked to comment on the experiment, he could have shown the BBC's expert how to use thermite to do exactly what the BBC was trying to show could not be done. A member of Architects and Engineers for 9/11 Truth had already made a film showing experiments which showed how thermite could be used in this way. It would have been very easy to recreate his experiment. The fact that this was not done showed at least incompetence by the programme makers in presenting information which was out of date. If they were not incompetent, then it showed a clear objective of presenting a false argument to viewers.
- Thermite, used in small steel containers, had been used for years to weld sections of railway lines. As only the BBC's test had been included in the programme, viewers had been given only one side of the argument. If the ECU, having seen the evidence both for and against the use of thermite, had felt unable to assess the information, why did the ECU keep referring to viewers' ability to make up their own mind on the basis of only the BBC's evidence? The ECU's comment about being unable to conclude that the evidence of one DIY experiment should have been given more weight than the other was redundant. By including their own DIY experiment in the programme, the programme makers had decided to give it more significance than the one conducted by a qualified engineer. In doing so, they had indicated what they wanted the public to think.

- A trial lesson in a single-engine Cessna, accompanied by an instructor, did not prove that the hijackers could have flown four-engine Boeing 767-200s into their targets (which was equivalent to the skill required to land on an aircraft carrier). If the aircraft had flown slowly and in straight lines, it would have made the official story more believable, but they had been flown in complicated paths at speeds that were impossible for standard commercial jets and numerous professional pilots had stated that they did not consider this possible for most fully qualified and experienced pilots. The ECU's statement that viewers could draw their own conclusions would have been fair comment if the programme had started with a notice that the BBC did not endorse the content. As no such notice had been given, the BBC ought to have ensured that all the arguments presented were based in fact. The programme makers could have asked a qualified airline pilot if they thought someone with a few lessons in a Cessna could fly such an aircraft. The answer would have destroyed the implied legitimacy on which the programme makers were relying.

One complainant raised an additional issue, alleging a potential breach by the ECU of the Editorial Guidelines on Accountability. According to the complainant, the ECU had failed adequately to address the issues of accuracy that the complainant had raised, or to refer to the Guidelines on Accuracy that the complainant had cited.

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 transcripts of the item in question and considered that the appeals did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee

The Senior Editorial Strategy Adviser said that the Head of Editorial Standards had considered the complaints against the Editorial Guidelines on Accuracy, Impartiality and Accountability.

#### The programme's approach

The Head of Editorial Standards noted that the Editorial Guidelines on Impartiality allow programme makers to exercise their 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. In the Head of Editorial Standards' view, the Executive had set out its editorial reasons for choosing to approach the subject of 9/11, not by means of a wide-ranging forensic investigation, but through the medium of debate. The Head of Editorial Standards noted that the scope of the debate, and hence of the programme, was determined by the individual participants' choice of theory. Towards the beginning of the programme, the presenter explained:

"Over the next week each of my fellow travellers is going to challenge me on a conspiracy theory they believe proves the official version wrong."

The Head of Editorial Standards also noted the provisions of the Editorial Guidelines on Impartiality, which require that personal view content be clearly signposted to audiences in advance. In the Head of Editorial Standards' view, the premise of the programme and the presenter's personal stance in relation to 9/11 were clearly established at the outset.

At the beginning of the programme, the presenter said:

"Unbelievably, there are many people who doubt the conclusions of the original investigation and want to believe the American government was in some way responsible for this tragic event. I'm taking five of them to America on an extraordinary journey to see if I can change their minds. It'll be a tough mission. These guys appear to be convinced conspiracy theorists."

The presenter continued:

"Personally, I'm as certain as certain can be that the attacks were ordered by Osama bin Laden."

It would therefore have been evident to the audience at the outset that, in the programme that was to follow, the presenter would be seeking to challenge the five participants' individual theories and to persuade them to change their minds. The Head of Editorial Standards was therefore satisfied that, in accordance with the Editorial Guidelines, the programme's personal view content had been clearly signposted to the audience in advance. She took the view that, having been informed of the purpose of the programme and of the presenter's and participants' respective and opposing stances in relation to the subject, viewers would have been able to evaluate the programme's content accordingly, and to give what they considered to be appropriate weight to the opinions expressed therein.

So far as the remainder of the programme was concerned, the Head of Editorial Standards believed that Trustees would be satisfied that, for the reasons explained below, and in accordance with the requirements of the Editorial Guidelines on personal view content, the programme had: retained a respect for factual accuracy; fairly represented the opposing viewpoints that were included; provided participants with an opportunity to respond to the presenter's attempts to change their mind; and ensured that a sufficiently broad range of views and perspectives had been included.

The Head of Editorial Standards therefore concluded that there was insufficient evidence that the appeals had a reasonable prospect of success on the basis that the programme's approach was biased. Nor did the Head of Editorial Standards consider it to be appropriate, proportionate or cost-effective for the Trust to address either appeal on this ground.

#### Choice of participants

Issues concerning the choice of participants required the Head of Editorial Standards to consider the crucial distinction between the respective roles of the BBC Trust and the BBC Executive Board.

Article 7 of the BBC's Royal Charter states:

"... the main roles of the Trust are in setting the overall strategic direction of the BBC, including its priorities, and in exercising a general oversight of the work of the Executive Board. The Trust will perform these roles in the public interest, particularly the interest of licence fee payers. The Executive Board has responsibility for delivering the BBC's services in accordance with the priorities set by the Trust and for all aspects of operational management ..."

Article 9(3) of the Royal Charter states:

"... the Trust must not exercise or seek to exercise the functions of the Executive Board."

Article 38(1)(b) of the Royal Charter states:

"The Executive Board ... is responsible for ... the direction of the BBC's editorial and creative output."

In the Head of Editorial Standards' view, the programme makers' exercise of their editorial judgement in relation to the choice of participants concerned the direction of the BBC's editorial and creative output, and was consequently a matter in which the Trust could not involve itself – unless, exceptionally, the exercise of that editorial judgement had given rise to a specific breach of the Editorial Guidelines, or to a regulatory issue.

The Head of Editorial Standards therefore went on to consider whether the choice of participants had raised any potential breach of the Impartiality Guidelines. She noted that the provisions of the Editorial Guidelines had to be applied to the programme that was actually broadcast, not to the programme that complainants believed should have been broadcast. The Guidelines did not require the Head of Editorial Standards to take into account considerations that were not applicable to the programme's chosen subject, scope, approach or content.

As the ECU had noted, the programme makers could have chosen five people with technical expertise or knowledge, but that would have resulted in an entirely different programme. Audiences would have been in no doubt that the five people on the road trip were lay individuals who were sceptical about the official version of events. The Head of Editorial Standards agreed with the ECU's view that, knowing the five participants were ordinary people with no particular expertise, viewers would have been able to judge the programme's content accordingly.

In the Head of Editorial Standards' view, there was no evidence to support any potential breach of the Impartiality Guidelines in relation to the programme makers' exercise of their editorial judgement in the choice of participants. She also took the view that there was no evidence to suggest that the programme makers' exercise of their editorial judgement in the choice of participants had given rise to any potential regulatory issue, and therefore concluded that this was not a matter in which the Trust could involve itself.

#### Choice of content

Similarly, the programme makers' exercise of their editorial judgement in relation to the choice of content concerned the direction of the BBC's editorial and creative output, and was consequently a matter in which the Trust could not involve itself – unless, exceptionally, the exercise of that editorial judgement had given rise to a specific breach of the Editorial Guidelines, or to a regulatory issue.

The Head of Editorial Standards went on to consider whether the choice of content had given rise to any potential breach of the Editorial Guidelines on Accuracy and/or Impartiality. She reiterated that the provisions of the Editorial Guidelines had to be applied to the programme that was actually broadcast, not to the programme that complainants believed should have been broadcast. The Head of Editorial Standards took the view that the question to be considered was whether the content of the programme as transmitted had been inaccurate and misleading, and/or biased.

The Head of Editorial Standards noted that the programme's content was prescribed to a large extent by the participants' selection of which particular aspect of the official version



of events they wished to challenge, and that none of the participants had chosen to debate the conduct of the CIA, the collapse of WTC7 or the presence of molten iron at the WTC. As the programme had not purported to offer an exhaustive analysis of the events of 9/11, the Head of Editorial Standards did not believe that Trustees would agree that it was necessary to satisfy the requirements of due accuracy and/or due impartiality for those matters to have been included.

She therefore believed that the programme's omission of those three issues would not be seen by the Trustees as a potential breach of the Editorial Guidelines.

The Head of Editorial Standards agreed with the ECU that the time limit had expired for the investigation of an alleged error in a programme that had been broadcast in 2007. Given that *9/11: Conspiracy Road Trip* had not purported to offer an exhaustive investigation, it was not necessary for it to have considered the issue of whether a correction was appropriate.

### Choice of contributors

The Head of Editorial Standards then considered whether the programme's omission of any contribution from an engineer from the 9/11 Truth Movement had caused the programme to be inaccurate or biased. She noted that the programme's format was as follows: one of the five participants would explain and advocate their particular alternative theory; the presenter would then introduce the participants to a contributor with knowledge of and/or expertise in that particular aspect of the subject; the expert would explain their views; and participants would challenge the expert's explanation.

This format provided the opportunity for debate between participants and knowledgeable contributors, and allowed both sides of the argument to be presented. The five proponents of alternative theories were given the opportunity to challenge those who accepted the official version of events, and to question them about aspects of the official version that they found unsatisfactory. Knowing that the participants had no particular expertise, whereas those with whom they were debating had specialist knowledge, viewers would have been able to evaluate contributors' views accordingly.

The Head of Editorial Standards noted that road trip participants had been given the opportunity to question demolition expert Brent Blanchard, and that the programme had included Mr Blanchard's explanation of how controlled demolitions were carried out and the participants' response to his comments. This was followed by a contribution from mechanical engineer Tony Szamboti, whose credentials were established by the presenter's introduction, which stated that Mr Szamboti had written articles about the Twin Towers in professional journals.

Mr Szamboti explained to two road trip participants why some believed that thermite could have been used to bring down the WTC towers, and showed them an electronic version of what appeared to be an academic paper by Professor Niels Harrit et al on the presence of thermitic material in WTC dust. Mr Szamboti spoke with professional authority, and his contribution provided viewers with an explanation of the controlled demolition theory – albeit one that was not necessarily as ample as complainants would have wished. The Head of Editorial Standards agreed with the ECU's view that this contribution had gone some way towards addressing the complainants' concerns, and she believed that Trustees would conclude that the omission of any contribution from an engineer from the 9/11 Truth Movement had not rendered the programme inaccurate, misleading or biased.

In the Head of Editorial Standards' view, there was no evidence to present to Trustees to



support any potential breach of the Guidelines on Accuracy or Impartiality in relation to the programme makers' exercise of their editorial judgement in the choice of content. She also took the view that there was no evidence to suggest that the programme makers' exercise of their editorial judgement in the choice of content had given rise to any potential regulatory issue, and therefore concluded that this was not a matter in which the Trust could involve itself.

### Validity of demonstrations

The Head of Editorial Standards adopted the ECU's reasoning that the thermite demonstration had been clearly presented as a DIY chemistry experiment, rather than as a peer-reviewed and scientifically validated one. In her view, the audience would have recognised that the demonstration was merely a quick attempt to test the theory concerning the use of thermite in the demolition of the WTC towers, and would have weighed its conclusions accordingly. The Head of Editorial Standards could not agree that it was likely that viewers would have regarded the demonstration's results as conclusive proof that thermite could not melt steel under any circumstances. The Head of Editorial Standards could not therefore agree that Trustees would consider that viewers would have been misled by the experiment.

The Head of Editorial Standards went on to consider whether the omission of contradictory evidence would have been likely to mislead the audience. Although she was not in a position to evaluate the methodology of the video clip that was cited in support of the complainants' argument, she accepted that it appeared to show that, under certain conditions, thermite could burn through or seriously weaken steel girders. However, she also noted that in a programme of limited duration, programme makers had to exercise editorial judgement about which information to include. The controlled demolition theory had already been clearly explained by Mr Szamboti, and it was most unlikely that viewers would have concluded from the DIY experiment that the theory concerning the use of thermite in the controlled demolition of the WTC towers had been disproved.

The Head of Editorial Standards could not therefore agree that the programme's omission of any reference to the alternative demonstration was inaccurate or misleading.

Noting that the ECU had acknowledged that the flying demonstration was far from scientific, and had not proved one way or the other whether the planes that had hit the Twin Towers were piloted by terrorists, the Head of Editorial Standards believed Trustees would have agreed with the ECU's view that viewers would have judged the evidential value of the demonstration accordingly.

With regard to the transferability of pilot skills from light aircraft to large jet, the Head of Editorial Standards noted that the flying sequence included the following exchange between first-time pilot Shazin and flight instructor Robert Hadow (RH):

- Shazin:        So how easy do you think it would be for an amateur pilot to fly a big, massive airliner jet?
- RH:             Well, in fact it's easier to fly a big jet. For example, you feel the slight bumps we're going through? You won't feel those in a seven-forty-seven. ... But it's the same basic principles; this airplane or any other big airplane.

The flying sequence also included Charlotte's sceptical response:

- Charlotte:     I mean, do you know much about Boeings?

- RH: As a matter of fact, yes.
- Charlotte: Okay, the exact Boeing that went into the World Trade Center ...?
- RH: All they had to do was fly straight and level towards a target.
- Charlotte: The people that trained them didn't believe they could do this, and yet the rest of us will just accept that they could, and dismiss any other possibility...?

It seemed to the Head of Editorial Standards that the programme had allowed both sides of the debate to be clearly articulated. While the Head of Editorial Standards appreciated the arguments that the inclusion of a contribution from a member of Pilots for 9/11 Truth and/or a reference to the speed of the planes which hit the Twin Towers might have given the audience a fuller appreciation of, and perhaps lent weight to, certain alternative theories, she could not agree that this was necessary for the avoidance of inaccuracy or bias. In her view, when judged against the programme's subject, scope, approach and content, the Trustees would find that the requirements of due accuracy and due impartiality had been met.

The Head of Editorial Standards therefore concluded that there was insufficient evidence that either appeal had a reasonable prospect of success on the ground that the demonstrations were inaccurate and misleading.

Nor did the Head of Editorial Standards consider it to be appropriate, proportionate or cost-effective for the Trust to address either appeal on this ground.

#### Accountability

The Head of Editorial Standards noted that many of the arguments in this case had simultaneously raised issues of Accuracy and Impartiality. The Head of Editorial Standards also noted that, in its complaint summary, the ECU had stated:

"The relevant guidelines would therefore appear to be those on Accuracy and Impartiality."

In her view, it was implicit in the ECU's subsequent findings that it had considered and applied all relevant Editorial Guidelines on both Accuracy and Impartiality in a manner that was appropriate to the issues under consideration.

The Head of Editorial Standards therefore concluded that there was insufficient evidence that the appeal had a reasonable prospect of success on the basis that the ECU had either failed to apply or to apply correctly the appropriate Editorial Guidelines. Nor did the Head of Editorial Standards consider it to be appropriate, proportionate or cost-effective for the Trust to address the appeal on this basis.

Two complainants requested that the Committee review the decision of the Head of Editorial Standards not to proceed with their appeals.

The first complainant referred to the wide support among MPs and others for his complaint. He said that the BBC had failed to mention arguably the most important piece of scientific evidence showing that WTC7 was brought down by controlled demolition. He said this was a breach of the Royal Charter and Agreement. He reiterated the view that the BBC had also failed to correct a previous error in 2007 relating to the collapse of WTC

7. The complainant said that, given public opinion about 9/11 was split, the BBC should have presented evidence from both sides.

The second complainant reiterated his concern about the biased and inaccurate nature of the BBC's coverage of 9/11 and emphasised the wide support for his complaint.

### **The Committee's decision**

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

#### The programme's approach

The Committee noted that the complainants had been critical of the programme's approach, which was to take five people who were sceptical about the official version of events to America where each of the participants would challenge the presenter on a theory which they believed proved the official version wrong. The Committee noted that this approach, and the use of personal views, was well signposted within the programme. The Committee agreed that, having been informed of the purpose of the programme and of the presenter's and participants' respective and opposing stances in relation to the subject, viewers would have been able to evaluate the programme's content accordingly, and to give what they considered to be appropriate weight to the opinions expressed therein. The Committee concluded that there was no reasonable prospect of success for an appeal on the basis that the BBC's decision to approach the subject of 9/11 in this programme in the way it had was flawed.

#### Choice of participants

The Committee agreed with the Head of Editorial Standards' view that the programme makers' exercise of their editorial judgement in relation to the choice of participants concerned the direction of the BBC's editorial and creative output, and was consequently a matter in which the Trust could not involve itself – unless, exceptionally, the exercise of that editorial judgement had given rise to a specific breach of the Editorial Guidelines, or to a regulatory issue.

The Committee noted that the ECU and Head of Editorial Standards had accepted that the programme makers could have chosen five people with technical expertise or knowledge, as would have been preferred by the complainants. However, the Committee agreed that the audience would have been in no doubt that the five people on the road trip were lay individuals who were sceptical about the official version of events and that, knowing this, viewers would have been able to judge the programme's content accordingly.

The Committee considered that the evidence did not support a breach of the Impartiality Guidelines with regard to the choice of participants. The Committee also considered that the evidence did not suggest that the choice of participants gave rise to any potential regulatory issue. The Committee concluded that this was therefore a matter in which the Trust could not involve itself.

#### Choice of content

The Committee agreed with the Head of Editorial Standards that the programme's content was prescribed to a large extent by the participants' selection of which particular aspect of the official version of events they wished to challenge. The Committee agreed that, as the

programme had not purported to offer an exhaustive analysis of the events of 9/11, it was not necessary for the specific matters raised by complainants to have been included in order to satisfy the requirements of due accuracy and/or due impartiality. The Committee therefore concluded that there was no reasonable prospect of success for an appeal on the basis that certain issues should have been included in the programme.

The Committee also agreed that it was not necessary for the ECU to have considered whether a correction was appropriate for an alleged inaccuracy in a separate programme shown in 2007, given that *9/11: Conspiracy Road Trip* had not purported to offer an exhaustive investigation, and that five years had elapsed since the alleged inaccuracy was broadcast.

#### Choice of contributors

The Committee considered the complainants' argument that the omission of any contribution from an engineer from the 9/11 Truth Movement had caused the programme to be inaccurate and biased. The Committee noted the programme's format: one of the five participants would explain and advocate their particular alternative theory; the presenter would then introduce the participants to a contributor with knowledge of and/or expertise in that particular aspect of the subject; the expert would explain their views; and participants would challenge the expert's explanation. The Committee agreed that this provided the opportunity for debate between participants and knowledgeable contributors, and allowed both sides of the argument to be presented. The Committee noted the way the programme had used the experts that were featured and concluded that the omission of any contribution from an engineer from the 9/11 Truth Movement did not necessarily render the programme inaccurate, misleading or biased.

The Committee agreed that viewers, knowing that the participants had no particular expertise, whereas those with whom they were debating had specialist knowledge, would have been able to evaluate contributors' views accordingly.

The Committee concluded that there was no reasonable prospect of success for an appeal on the basis that the omission of contributions from experts in support of the alternative theories had rendered the programme either inaccurate or biased.

#### Validity of demonstrations

The Committee noted that neither the demonstration of the use of thermite nor the flying demonstration had been presented as being scientifically conclusive. The Committee considered that viewers would have judged the evidential value of them accordingly. The Committee did not agree that it was necessary to go into the level of detail which the complainants suggested, or provide information on scientific experiments which allegedly supported the alternative theories, in order to maintain due accuracy and due impartiality. The Committee agreed that there was no reasonable prospect of success for an appeal on the basis that the demonstrations had been inaccurate or biased.

#### Accountability

The Committee noted that the ECU had initially stated that the relevant Guidelines were those on Accuracy and Impartiality. The Committee agreed with the Head of Editorial Standards that it was implicit in the ECU's subsequent findings that it had considered and applied all relevant Editorial Guidelines on both Accuracy and Impartiality in a manner that was appropriate to the issues under consideration. The Committee concluded that there was no reasonable prospect of success for an appeal on the basis that the ECU had either failed to apply, or had applied incorrectly, the appropriate Editorial Guidelines.

The Committee noted that the complainants who had challenged the decision of the Head of Editorial Standards not to accept the appeal, had both referred to the level of wider support for their complaints.

The Committee was mindful that its consideration was whether there was a reasonable prospect of success for the allegations made by complainants on appeal, and that the relevant considerations were the same irrespective of the number or background of the complainants involved, or any wider support claimed by those complainants.

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