

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

BBC News at Ten, BBC One, 6 February 2012

The complaint was about a BBC News at Ten report on the day's proceedings of the Leveson Inquiry into the culture, practice and ethics of the press. The complainant said that the reporter had inaccurately reported Paul Dacre's evidence, leading to the suggestion that Daily Mail readers were prejudiced in their views, and that this had been a breach of the BBC's editorial guidelines on accuracy. The complainant also alleged that the reporter had expressed the opinion himself that Daily Mail readers were particularly prejudiced in their views, and that this had been a breach of the BBC's editorial guidelines concerning impartiality.

The Committee concluded that:

- the report's introduction had been about Mr Dacre's "natural feel" for what his readers wanted and that, in this context, the reporter's use of the word "prejudices" was accurate. Furthermore, the reporter had qualified the word by saying that Mr Dacre "prefers to call them anxieties" and this had amplified the meaning of the word in the context.
- the guidelines regarding due accuracy had not been breached.
- the use of the term "prejudices" had originated in the dialogue that had taken place at that day's session of the Leveson Inquiry between Mr Jay and Mr Dacre. The reporter was describing what Mr Jay and Mr Dacre had said and, on this basis, he did not express an opinion that Daily Mail readers were particularly prejudiced.
- the guidelines regarding due impartiality had not been breached.

The complaint was not upheld.

For the finding in full see pages 8 to 13.

Room 101 – Extra Storage, BBC One, 11 March 2012

The complainant said that a discussion of modern goal celebrations in football, and in particular the use of the word "pansy-ish" in this context, was homophobic. The Committee agreed at a meeting on 19 September 2012 that the element of the appeal dealing with the discussion of footballers' behaviour on the pitch did not qualify for consideration on appeal. However, the Committee agreed to consider the specific complaint about the use of the word "pansy-ish".

The Committee concluded:

- that the debate was clearly about footballers and their behaviour on the pitch and was not comparing footballers to gay men.
- that the term "pansy-ish" had been used in a non-discriminatory manner and, therefore, there had not been any careless or offensive stereotypical use of a derogatory term.

- that, taking into account the audience's expectations of this programme, the remark in the context of a comedy panel show would not fall short of generally accepted standards.
- that the use of the term "pansy-ish" in this context would not influence young people to use it as a term of abuse towards gay people. Although the word "pansy" may be used as a derogatory term towards a gay man, its use in this programme and in this context was not, in the Committee's view, aimed at homosexuals and therefore would be unlikely to influence the kind of language young people would see as acceptable.
- that this programme was not in breach of the Guidelines on Harm and Offence.

The complaint was not upheld.

For the finding in full see pages 14 to 19.

Tweet from a BBC news presenter

The complainant said that a BBC news presenter's tweet to Peter Hain MP showed political bias and undermined the perception of the presenter's impartiality.

The Committee concluded:

- that the tweet showed no endorsement of the Severn Barrage project nor of Mr Hain's future role promoting it.
- that the audience's perception of due impartiality would not have been impacted negatively by the presenter's Twitter comment, and nor was there a breach of the Conflicts of Interest Guidelines.

The complaint was not upheld.

For the finding in full see pages 20 to 23.

News Bulletins, BBC Radio 4, 29 May 2012

The appeal concerns news bulletins on Radio 4's *Today* programme about protests at the Globe Theatre in London during a performance by Israel's Habima theatre company. Two complainants appealed to the Trust alleging that the wording of a bulletin on Radio 4's *Today* programme implied that protestors objected to the race of Habima's audiences, rather than Habima's performances in settlements in the Occupied Territories. The complainants argued that this misrepresented protestors as being anti-Semitic and misled the audience as to the reasons for the protests. Both complainants who appealed were present at the protests and so the Fairness guidelines were engaged.

The Committee concluded:

- that the script of the bulletin was not written in clear, precise language and the Accuracy Guidelines had been breached in this regard.
- that the programme had, however, provided enough information to alert listeners to the point that the criticism was not simply about the fact the theatre company was performing to Jewish audiences but that it was doing so in the Occupied Territories.

- the Committee concluded that the report would not have materially misled its audience and did not distort known facts, and the Committee did not uphold the complaint on this point.
- that the audience would not have concluded from this one sentence in the wider context of a brief report that those who had criticised the company, including those who had been linked with organising the Globe protest or who had protested at the Globe, were motivated by anti-Semitism.
- that there had been no material inaccuracy in the reference to critics of the theatre company (including the protestors) which would have caused a breach of the BBC's Fairness Guidelines.
- that a right to reply was not necessary to achieve Fairness in respect of these complaints and that a broadcast correction and apology was not required.
- that the performance by the Habima company at the Globe was not a controversial matter under the Guideline.
- that, while the Committee had upheld a breach of the Accuracy Guidelines with regard to the omission of a clear and precise explanation that the criticisms were about performances in settlements regarded as illegal, the item had explained these performances were given in the Occupied Territories.
- that there was no breach of the Impartiality guidelines.

The complaint was upheld with regard to Accuracy, not upheld with regard to Impartiality and Fairness.

For the finding in full see pages 24 to 30.

Formula 1 – The Monaco Grand Prix, BBC One 27 May 2012 and Formula 1 website

The complainant said that the BBC's website was inaccurate in stating that interactive analysis would follow on from the end of the BBC One coverage of each Formula 1 race. The complainant also said that the Formula 1 coverage broadcast on BBC One on 27 May did not make clear that the *F1 Forum* which was mentioned as following on from the programme was not available on the Freeview Red Button Service at that time.

The Committee concluded:

- that the BBC's Formula 1 website contains adequate information for viewers about the Red Button schedule and which streams are available on the various platforms.
- that enough information had been provided on the website about the limitations of the Red Button service on Freeview and that the website was not inaccurate in this regard.

- that, in the programme broadcast on 27 May, the Accuracy Guidelines had been breached in that the information which was broadcast was not clear and precise regarding the availability of the F1 Forum on the Freeview Red Button service.

The complaint was upheld in part.

For the full finding see pages 31 to 36.

Football Focus

The complaint concerns a comment made by the presenter when the camera focussed on two fans following an interview with Ronaldo. The complainant said that by commenting that these fans looked as though they were on “the Ronaldo diet”, the presenter had insulted both them and Ronaldo. The complainant said he believed that the comment was a form of bullying and was disrespectful.

The Committee concluded:

- that the actions of the programme team in response to the complaint could have led to the complaint being considered to have been resolved at Stage 1.
- that, in isolation, an off-the-cuff remark which implied Ronaldo was overweight would not have been in itself offensive given he is a public figure and his weight and level of fitness as a former player were of interest.
- that the comment referring to the two identifiable fans, who are not public figures, was humiliating and did not meet generally acceptable standards in that it caused unjustifiable offence.

The complaint was upheld.

For the finding in full see pages 37 to 39.

Application of expedited complaint handling procedure at Stage 3

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

The Committee concluded:

- that it could find no evidence to support the complainant’s allegation that the Head of Editorial Standards’ decision to apply the expedited procedure was a personalised one.
- that the complainant had persistently and repeatedly made complaints which were appealed unsuccessfully to the BBC Trust following rejection at the previous stage and/or were shown on investigation to have no reasonable prospect of success.

- that the points of appeal which were upheld were outweighed in both number and significance by those which were either not upheld or not accepted on appeal.
- that the complainant had persistently and repeatedly made handling complaints which, apart from two exceptions, were not upheld and did not have a reasonable prospect of success.
- that the criteria for applying the expedited procedure had been met and the expedited procedure should be applied to appeals from the complainant, including those relating to handling, for a period of two years from the date of the Head of Editorial Standards' decision.

The complaint was not upheld.

For the finding in full see pages 40 to 42.

Appeal Findings

BBC News at Ten, BBC One, 6 February 2012

1. Background

The *BBC News at Ten* on 6 February 2012 carried a report about that day's proceedings of the Leveson Inquiry into the culture, practice and ethics of the press.

The report particularly concerned the evidence given to the inquiry by Mr Paul Dacre, Editor of the Daily Mail and Editor in Chief of Associated Newspapers.

Robert Jay QC asked Mr Dacre the following questions at that day's hearing:

Robert Jay: You also say that in order to sell newspapers, you must connect with your readers' views and reflect their interests and aspirations. That obviously means that you must empathise with your readers' views. Is that right?

Paul Dacre: I hope so.

Robert Jay: Does that include your readers' fears and prejudices, do you think?

Paul Dacre: "Anxieties" rather than "prejudices" is the word I'd use.

The *News at Ten* report, which was by BBC News correspondent Nick Higham, began:

"He's the man who runs Britain's second biggest daily with ferocious drive and a natural feel for his readers' prejudices – though he prefers to call them anxieties. Paul Dacre rarely appears in public, but today he came to the Leveson Inquiry ..."

2. Complaint

The complainant said that the *News at Ten* item had inaccurately reported Mr Dacre's evidence, leading to the suggestion that Daily Mail readers were prejudiced in their views, and that this had been a breach of the BBC's editorial guidelines on accuracy.

The complainant also alleged that the reporter had expressed the opinion himself that Daily Mail readers were particularly prejudiced in their views, and that this had been a breach of the BBC's editorial guidelines concerning impartiality.

Stage 1

On 1 March 2012 the complainant contacted the BBC Trust to complain about the above news report. He noted that the reporter had said Paul Dacre had "...a natural feel for his readers' prejudices, although he would prefer to call them anxieties".

This, said the complainant, was a clear case of the journalist expressing an opinion that Daily Mail readers were prejudiced in their views. Further, it implied that Mr Dacre believed his readers were prejudiced but that it suited his purpose to call these anxieties "prejudices".

The letter was forwarded to BBC Audience Services who responded on 26 April 2012. They provided an explanation from the reporter concerned, Nick Higham, that the comment about Mr Dacre was based on an exchange between Robert Jay QC and Mr Dacre at the hearing.

A further exchange followed in which the complainant said he did not consider the transcript explained or matched what had been said in the news report. Nick Higham provided further explanation of the context of the words he had used and their intended meaning. He said he appreciated that this context had not been spelt out in his script but that in a short news piece a lot had to be left out.

Stage 2

On 7 June 2012 the complainant wrote to the Editorial Complaints Unit (ECU) reiterating his objections to the report. He said he believed that the audience of a prime time news report would have taken the comment to mean "Daily Mail readers are prejudiced, and by direct implication, the Mail patronises its readers' prejudices" and this was not in keeping with the requirement for impartiality.

The ECU responded on 14 June 2012, setting out the issues and saying it would investigate in relation to the Editorial Guidelines on Accuracy and Impartiality.

On 17 July 2012 an ECU Complaints Director wrote to the complainant saying the ECU did not uphold the complaint. Its reasons included the following:

- The use of the word "prejudices" drew on the exchange between Mr Jay and Mr Dacre and on Mr Dacre's ability to empathise with the concerns of his readers.
- This had not been made explicit and the Complaints Director thought this "might have been made more clear".
- It could also be argued that the report was simply giving an account of differing views on how the thoughts and feelings of Mail readers should best be characterised.
- The Complaints Director recognised the complainant felt the reference to "prejudices" was insulting to readers of the Daily Mail but the ECU did not share his view of the offensiveness of the comment.
- It could be argued that readers of all newspapers, and none, had "prejudices" of one kind or another – that is, pre-conceived opinions or attitudes on a subject which might lead to a reader favouring the editorial line of one newspaper over another. However, it did not follow that this reflected poorly on a readership or an individual.
- Nothing in this brief comment "would have given the impression that readers of that particular paper were uniquely prejudiced, or any more prejudiced than any other group".
- The report had included Mr Dacre's own view on how best to characterise those positions – as "anxieties". Viewers, therefore, would have been in a position to make up their own minds.
- In any case, the report was not about Daily Mail readers, but about Mr Dacre and the qualities which made him an exceptional newspaper editor. Viewers would

primarily have looked to the report for an understanding of the man, rather than an understanding of the attitudes of the readers of one of his newspapers.

Appeal to the Trust

The complainant appealed to the Trust on 11 August 2012. He said he felt the point of his complaint had been missed by the ECU. His further points included the following:

- The meaning of words can change. It was true that “prejudices” could be defined as “pre-conceived opinions or attitudes” but in these “politically correct times” words often carry a very different, commonly understood, non-dictionary connotation. “I think we all know that the word ‘prejudiced’ is a perfect example of this,” he said.
- If the word “prejudices” was unimportant as the ECU suggested, why did Mr Dacre correct Mr Jay at the inquiry?
- As far as the argument that all newspaper readers had prejudices was concerned, why had the reporter not inserted a few words to specify that? By omitting those words, he had “risked, accidentally or otherwise, engendering a mind-set with viewers”. It “created a particular impression”.
- It was irrelevant that the report was about Mr Dacre, rather than Mail readers.

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

Point (A) That the evidence put forward by Mr Dacre at the Leveson Inquiry was inaccurately reported, leading to the suggestion that Daily Mail readers were prejudiced in their views.

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

Point (B) That the reporter expressed an opinion that Daily Mail readers were particularly prejudiced in their views.

3. Applicable Editorial Guidelines

The following Guidelines on Accuracy and Impartiality are relevant to this appeal.

Section 3 – Accuracy

3.1 Introduction

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

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

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

3.2.3 The BBC must not knowingly and materially mislead its audiences. We should not distort known facts...

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...

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

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...

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

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 the subsequent comments received from the complainant.

The Committee first considered the issue the complainant had raised in relation to accuracy. This was the allegation that:

Point (A) The evidence put forward by Mr Dacre at the Leveson Inquiry was inaccurately reported, leading to the suggestion that Daily Mail readers were prejudiced in their views.

The Committee noted that the pivotal point in the consideration of this complaint was the meaning that should be attached to the word "prejudices" in the context of the item.

It examined the arguments of the complainant, including that:

- the words "prejudices" and "prejudiced" were not neutral words in what the complainant said were these "politically correct times"

- Mr Dacre corrected Mr Jay and said it was his readers' "anxieties" rather than "prejudices" that he empathised with, so the word "prejudices" should not have been used in the report
- the substitution of "rather" with "prefers" in the script added to the inaccuracy, suggesting that Mr Dacre also believed his readers were prejudiced
- the report had provided no explanation that the word "prejudices" had arisen from the exchange between Mr Dacre and Mr Jay.

The Committee then examined the responses that had been made by the BBC to these points, including that:

- the word "prejudiced" had not been used and that it was not the same thing as "having prejudices"
- that "prejudices" could be mildly pejorative but what was meant here were "preconceived views, biases and partiality", and that readers of other newspapers would have their own set of "prejudices"
- it had not been possible in a short news report to provide the context of the exchange between Mr Dacre and Mr Jay that had led to the use of the word.

The Committee noted that it was, indeed, the word "prejudices" that had been used in the report, rather than "prejudiced", but it did not consider it was necessary to debate the difference between the two terms for the purpose of considering the complaint. It fully understood that the complainant considered both terms to be inaccurate in the context.

The dictionary definitions of "prejudices" provided to the Committee (taken from the Oxford English Dictionary) were considered, and it was noted that these definitions encompassed both the complainant's and the BBC's interpretations. The Committee understood its role, therefore, was to decide which of the interpretations was most reasonable in the context, and to consider the meaning most viewers would have taken from the report.

Overall, the Committee's view was that the reporter's and the ECU's argument had been fair: that the word "prejudices" in this context had been used by the reporter to convey that Daily Mail readers had "prejudices", meaning a certain set of preconceived views; readers of other papers, meanwhile, would have had different sets of preconceived views or "prejudices".

It was reasonable for the word to have been used, the Committee decided, because it had originated in the dialogue that had taken place at that day's session of the Leveson inquiry between Mr Jay and Mr Dacre. The Committee took the complainant's point that this context had not been explained, but agreed that such an explanation would not have been crucial to viewers' interpretations of the word "prejudices". On this basis, the Committee did not consider that the accuracy of the report was affected by the lack of contextual reference.

The Committee concluded that the report's introduction had been about Mr Dacre's "natural feel" for what his readers wanted and that, in this context, the reporter's use of the word "prejudices" was accurate. Furthermore, the reporter had qualified the word by saying that Mr Dacre "prefers to call them anxieties", the Committee noted, and this had amplified the meaning of the word in the context.

The Committee concluded that the guidelines regarding due accuracy had not been breached.

The Committee then considered the issue which the complainant had raised in relation to impartiality. This was the allegation that:

Point (B) The reporter had expressed an opinion that Daily Mail readers were particularly prejudiced in their views.

The Committee noted that the relevant guideline in its consideration was guideline 4.4.13 which states:

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...

The Committee appreciated the complainant's view on this point, and that his argument had followed on from him considering that the report had breached the accuracy guidelines.

However, the Committee had decided on Point (A), above, that the report had been duly accurate in its use of the term "prejudice". The Committee did not agree with the complainant that the reporter had conveyed to viewers that Daily Mail readers were particularly prejudiced in their views; in the Committee's view, the use of the term had originated in the dialogue that had taken place at that day's session of the Leveson Inquiry between Mr Jay and Mr Dacre. The Committee concluded, therefore, that the reporter was describing what Mr Jay and Mr Dacre had said and that, on this basis, he did not express an opinion that Daily Mail readers were particularly prejudiced.

Finding: Not upheld.

Room 101 – Extra Storage, BBC One, 11 March 2012

1. The programme

The programme is a panel game in which celebrities are invited to nominate their pet hates and persuade the host to consign them to Room 101, named after the torture room in the novel *Nineteen Eighty-Four*. Three guests are asked to nominate their pet hate from a specified category. The host, Frank Skinner, decides the winner out of the three nominations, which is then consigned to Room 101.

In this edition the guests were Lord John Prescott, the comedian Micky Flanagan and the actress Rebecca Front. In the second round, the category for nominations was "Modern Life" and Lord Prescott chose "Goal Celebrations". This provoked a discussion by the panel about the over-exuberant behaviour of modern-day footballers when they score a goal and Micky Flanagan commented that this was "pansy-ish" behaviour.

2. The complaint

Stage 1

The complainant contacted BBC Audience Services about the panel's dislike of footballers showing affection on the pitch. In particular, he objected to the use of the word "pansy-ish" which he felt was "blatantly homophobic". He felt it could damage the self-esteem of young gay boys as this comment was effectively unchallenged by Frank Skinner.

BBC Audience Services replied having discussed the use of the word "pansy-ish" with the production team. They felt that Micky Flanagan was trying to convey the idea that "modern day goal celebrations seem weaker or at the most more effeminate than the old days of 'hard men' in football". They added that a man can be described as effeminate in his mannerisms without meaning that he is homosexual.

The BBC Entertainment Commissioning Editor responded to a further email from the complainant. In her view, the context for the remark was firmly established when the panel contrasted today's footballers with their predecessors. The reference to "pansy-ish" "was in no way a reference to sexuality, but rather to particular mannerisms or actions exhibited by modern day footballers". She added that two other complaints had been received about the issue, which in her view suggested that the complainant's interpretation of these comments was not shared by the vast majority of viewers.

Stage 2

The complainant escalated his complaint to the Editorial Complaints Unit (ECU). He believed that the use of the word "pansy-ish" by Micky Flanagan was very offensive and breached the BBC's Editorial Guidelines. The complainant was not satisfied with the tone of the response from the BBC Entertainment Commissioning Editor and felt it devalued his original complaint by stating that very few other complaints had been received. He asked what audience research had been carried out amongst minority groups to establish what was offensive language. The complainant also felt that the response ignored the dictionary definition of the word "pansy". In his view, effeminacy is "inextricably linked with its meaning of a gay man". The complainant also thought that the use of the word should be compared to a similar situation in a racial context, for example by substituting the word "African" which would overwhelmingly be associated with "black". In his view it is impossible to use the word "pansy" "without unavoidably evoking and including its common meaning of 'gay'". By describing footballers' behaviour as "pansy-ish", the

complainant felt that the guest was “essentially expressing his strong dislike of behaviour which is generally associated with gay men”.

The Editorial Complaints Unit replied and stated that on this occasion the use of the word “pansy-ish” was describing effeminate behaviour and “a person can be described as effeminate without people drawing any inference about that person’s sexuality”. The discussion centred around the difference between modern-day footballers and their predecessors, such as Stanley Matthews, when they scored a goal. The comments were emphasising “the more flamboyant and comparatively effeminate attitudes of modern players, not their sexuality”. In this context, the Complaints Director did not believe that Micky Flanagan’s comment was homophobic or “likely to perpetuate any negative stereotype about gay people”.

Stage 3 – Appeal to the Trust

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

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

- The word “pansy” is a pejorative term towards gay men. Historically and culturally effeminacy is regarded as an indicator of homosexuality. The ECU attempted to narrowly define the word “pansy” as “effeminate”. It then concluded that antipathy to effeminate men is not homophobic. The ECU offered no objective evidence for this definition.
- If the word “African” had been substituted for the word “pansy”, then the comment would be seen to be affecting black people and would be considered racist. The ECU ignored this racial analogy which helps illustrate whether or not a comment about gay people is acceptable.
- The host, Frank Skinner, is very popular with teenagers and therefore likely to affect the kind of language which young people see as acceptable.

3. Applicable Editorial Guidelines

The following Editorial Guidelines are applicable to this case:

Section 5 – Harm and Offence

Introduction

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

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

When our content includes challenging material that risks offending some of our audience we must always be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted. Such challenging

material may include, but is not limited to, strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, and discriminatory treatment or language.

Generally Accepted Standards

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

Audience Expectations

5.4.1 We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience, taking account of the time and day on which it is available, the nature of the service and the nature of the content.

Portrayal

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

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

4. The Committee’s decision

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

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

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. The Committee was asked to consider whether generally accepted standards had been met, taking into account the context of any remark and the likely audience expectations for the programme. It was noted that the Guidelines on Portrayal, which form part of the Guidelines on Harm and Offence, specifically require taking into account the editorial justification of any remarks whilst avoiding careless or offensive stereotypical assumptions. The Committee also noted that it was required to consider the likely audience expectations for this programme when featuring a portrayal or stereotype that had been exaggerated for comic effect.

The Committee noted the context of this section of the programme in which Lord Prescott nominated “Goal Celebrations” as one of his pet hates. He focused on the difference between today’s over-effusive celebrations by footballers compared with those from the past when he was a young man. A transcript of the programme reads as follows:

- Lord Prescott: When there's a goal in football they all start running over to each other and kissing each other and throwing their hands around. Years ago when it was Stanley Matthews and he scored; he just walked away, didn't he? Now they all get down on their knees, pull their shirts out and go "Arrgh" and wait for the kiss. I mean what's that got to do with football?
- Micky Flanagan: Footballers are genuinely much more pansy-ish than they used to be you know.
- Frank Skinner: Well, I can't...
- Micky Flanagan: When I was growing up in the game there was a thing called a fair barge. Do you remember the fair barge Frank?
- Frank Skinner: Shoulder to shoulder.
- Micky Flanagan: Yes, bosh, get out of the way.
- Frank Skinner: John's been using it in the chip shop for years. But I think people always say this about players, they're all millionaires and all that. These are massively skilled professionals and I think that those goal celebrations are the closest the working classes get to contemporary dance.
- Lord Prescott: Working classes! The working class don't act like that in football. It's all these guys. Some of them come from that background but in the real top teams where a lot of goals are going on – I agree that in West Brom it doesn't happen very often so you probably don't get many of this kissing.
- Frank Skinner: I can't remember what goal celebration we do. That's fair enough. You know that when they have something written on the t-shirt under the shirt, I always worry that players have had one for years and never scored. A bloke scored at the Albion about two months ago and the t-shirt said Who Shot JR? The best one is when the celebrations go wrong. This one's a Coventry player and I really love this as a post goal celebration that doesn't quite make the grade. (clip played of a player falling flat on his face).

The Committee noted that the exchange about the behaviour of football players was not only a discussion about players becoming more demonstrative over time, but also reflected a shift in the social class of football players over this period. Frank Skinner commented that modern football players were "all millionaires" and when he implied players were working class, Lord Prescott replied: "Working classes! The working class don't act like that in football."

The Committee noted some definitions for the word "pansy" when used in a colloquial sense. They include:

- Oxford Online Dictionary

Informal, derogatory an effeminate or homosexual man

- Webster Online Dictionary
 1. A timid man or boy considered childish or unassertive
 2. Offensive term for an openly homosexual man
- The Concise Oxford Dictionary

Colloq. derog. a. an effeminate man

b. a male homosexual

The Committee noted that there is no audience research about the use of the word “pansy”, but a couple of audience research reports examined attitudes to potentially offensive language. Both reports included minority groups within their sample, although only one included gay groups, and this did not specifically consider the word “pansy”.

The first report was commissioned by the BBC to consider the area of taste and standards in the media, and one of the areas examined was the appropriateness and acceptability of language [*Taste and Standards: qualitative research (2009)*⁴]. The Committee noted that the context of a particular type of programme has a strong impact on audience expectations. Each style of comedy/comedian has its “own” licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience. The Committee also noted that audiences draw a distinction between a more derisive, potentially bullying tone and mockery. An important factor is how a line is delivered, and by whom, and this can define content as acceptable or unacceptable. The report also concluded that the absence of very strong language (the f-word) and lack of aggression are key discriminators, as is the personality of different presenters.

The Committee also noted the second report entitled *Audience attitudes towards offensive language on television and radio*⁵ (Ofcom 2010). This report included an examination of the interpretation of words within a broad range of meanings. The Committee noted that, if words and phrases only or mainly referred to a particular group, then they were considered generally less acceptable by both participants from the general UK sample and minority groups. This was also the case when words which could be interpreted in more than one way were used in such a way as to make it clear that they are referring to a minority group. However, the Committee also noted that where discriminatory words have an additional meaning, which is negative but not directly discriminatory, some participants from the general UK sample found the use of those words to be acceptable, provided they are used in their non-discriminatory sense (e.g. “pikery” used to mean “cheap” rather than directly referring to travellers). This view was also expressed by some participants from some of the minority audiences when discussing clips that contained potentially discriminatory language which could be seen to be aimed at them. However, some participants disliked the use of words which could be seen to be aimed at them or their family members in any context, whether explicitly directed at someone likely to find it offensive or not.

The Committee considered the context in which the word “pansy-ish” had been used. The concept of *Room 101 – Extra Storage* is that guests are specifically asked to nominate their pet hates and that, on this occasion, Lord Prescott had put forward “Goal celebrations” as a subject which irritated him about modern life. The programme’s celebrity panel derided the behaviour of today’s footballers on a number of grounds,

⁴ http://downloads.bbc.co.uk/aboutthebbc/reports/pdf/taste_standards_qualitative.pdf

⁵ <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

including their over-exuberant behaviour which resulted in embracing and kissing on the football pitch. This behaviour was compared with footballers from a bygone era who were very restrained in their celebratory behaviour on the field. One of the distinctions between the two eras in the panel's opinion was the difference in the economic and class status of the players, with today's players forsaking their working class roots.

Turning to the use of the term "pansy-ish", the Committee took into account the context in which the word was used. The Committee agreed that it was the footballers' behaviour on the football pitch that was being criticised and portrayed as being effeminate. The Committee agreed that this behaviour was not synonymous with being gay. In the Committee's opinion, the debate was clearly about footballers and their behaviour on the pitch and was not comparing footballers to gay men. The Committee concluded that the term had been used in a non-discriminatory manner and, therefore, there had not been any careless or offensive stereotypical use of a derogatory term.

The Committee acknowledged that some viewers would associate this term with homosexual behaviour and be offended by its use. However, they had to consider whether this remark would offend the majority of viewers. The Committee took into account the audience's expectations of this programme and concluded that the remark in the context of a comedy panel show would not fall short of generally accepted standards.

As regards the hypothetical situation of including the word "African" as a description of the footballers' behaviour, the BBC could only consider each case on its merits. The theoretical substitution of a different word with any racial meaning illustrated the importance of considering the individual context of each case rather than broadening the debate out to speculate which words would qualify as offensive in different situations. The Committee could only decide on the material which had been broadcast rather than any hypothetical alternative.

The Committee did not believe that the use of the term "pansy-ish" in this context would influence young people to use it as a term of abuse towards gay people. Although the word "pansy" may be used as a derogatory term towards a gay man, its use in this programme and in this context was not, in the Committee's view, aimed at homosexuals and therefore would be unlikely to influence the kind of language young people would see as acceptable.

The Committee concluded that this programme was not in breach of the Guidelines on Harm and Offence.

Finding: Not upheld

Tweet from a BBC news presenter

1. The background

On 13 May 2012 at 10.36pm Peter Hain announced his resignation from the Shadow Cabinet via Twitter:

"I'm standing down from the Shadow Cabinet in order to lead the campaign in Parliament for the Severn Barrage."

He sent subsequent tweets at 10.47pm:

"Severn Barrage wld be UK's biggest new investment project & create thousands of new jobs. This is biggest contribution I can make right now."

and at 10.48pm:

"Severn Barrage also biggest renewable energy project in Europe – time to make it a reality."

At 11.13pm BBC Wales news presenter Rhun ap Iorwerth tweeted:

"@PeterHain All the best, Peter. You've made a huge contribution, and will continue to do so, I'm sure."

2. The complaint

The complainant felt strongly that the BBC presenter's tweet showed political bias and undermined the presenter's perceived neutrality in the minds of the viewer or listener. Whilst the complainant understood that the BBC disclaimed some responsibility for tweets, he said that Mr Hain was a "divisive" figure who remained a senior Labour politician, and his role as a campaigner for the Severn Barrage would be extremely controversial. The complainant felt the tweet displayed obvious political sympathies.

The Deputy Head of News, BBC Wales, responded at Stage 1 saying the fact that Mr Hain had made a significant political contribution at a Wales and UK level was inarguable. Similar views were reflected by Mr Hain's political opponents. There was no direct reference to the Severn Barrage in the presenter's message. Instead the tweet expressed "a general opinion that Mr Hain is likely to continue to contribute to public life in the future". He said the presenter was clear that this was the message he was trying to convey.

The Head of News & Current Affairs, BBC Wales, also responded at Stage 1. He supported his deputy's comments and did not uphold the complaint. However, he recognised that people who work for the BBC as journalists had to ensure their Twitter comments did not compromise their ability to do their job effectively and did not breach BBC guidelines. He said that the presenter's Twitter account clearly stated that his views were his own:

"However that does not give him carte blanche to say whatever he likes. He works for BBC Cymru Wales and he is expected to work within our guidelines and safeguard the BBC's reputation for impartiality. Bearing this in mind I have discussed this particular tweet with Mr ap Iorwerth, and he has assured me that his message was not meant to be taken in any other way beyond recognising Mr Hain's role in politics in the widest sense of the term and acknowledging any future role(s) he may take on. However I am mindful that his tweet could be

interpreted differently, and have also reminded him of the relevant BBC guidance on conflicts of interest and my expectation that he would work within this framework.”

The complainant reiterated his points at Stage 2 of the complaints process and stated that the tweet was a “comment in a public forum” which challenged perceptions of journalistic impartiality, especially as the proposed Severn Barrage was “perhaps the most controversial issue” in Wales this decade. The complainant said that the news presenter was likely to interview Mr Hain in future, and he wondered what viewers and listeners would think, “knowing the interviewer believes the person he is grilling has made a ‘huge contribution’ and is continuing to make it?”

The Director, BBC Wales, responded. He said it was “a matter of fact” that Mr Hain had “been a significant figure in both Welsh and British politics”. The tweet “reflected this reality – and therefore it was difficult to see how it might be argued that the message risked having any significant impact on perceptions of Rhun ap Iorwerth’s impartiality as a BBC journalist”. There was no implicit support for the Severn Barrage project. Although the complaint was not upheld, the Director asked the Head of News & Current Affairs to remind the news team about the BBC guidelines covering the use of personal social media accounts.

Appeal to the Trust

The complainant appealed to the Trust, stating that the tweet showed bias and undermined the presenter’s perceived neutrality in the minds of the viewer and listener.

The complainant raised the following points in relation to this case:

- Whilst Mr Hain had certainly had a long and distinguished career, it was not acceptable for a BBC News presenter to publicly praise a leading politician’s “huge contribution”. A tweet was a public pronouncement “just like writing a letter to the Times”. It was important “to consider the outcry if Huw Edwards had made such a public comment once Gordon Brown had announced he was standing down”.
- Mr Hain remains Labour MP for Neath and continues to hold strong and controversial opinions on tax and spend policies and on devolution. The Severn Barrage was a highly contentious subject. If Rhun ap Iorwerth interviewed Mr Hain in future on these controversial topics, what was the listener or viewer to think, “knowing that Rhun believes Mr Hain is continuing to make a ‘huge contribution’?”

3. Applicable Editorial Guidelines

The following editorial guidelines are applicable to this case:

Section 4 – Impartiality

News, Current Affairs and Factual Output

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.

Section 15 – Conflicts of Interest

News and Current Affairs

15.4.3 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'

The following guidance about social networking, microblogs and other third party websites (personal use) is also relevant to this case:

News and Current Affairs Staff, Blogging and Microblogging

Impartiality is a particular concern for those working in News and Current Affairs. Nothing should appear on their personal blogs or microblogs which undermines the integrity or impartiality of the BBC. For example, News and Current Affairs staff should not:

- advocate support for a particular political party;
- express views for or against any policy which is a matter of current party political debate;
- advocate any particular position on an issue of current public controversy or debate.

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 the subsequent comments received from the complainant and the BBC Wales presenter.

The Committee noted that Rhun ap Iorwerth is a freelance news presenter for BBC Wales. He is a former BBC Wales Chief Political Correspondent and a former presenter of *Good Morning Wales* for BBC Radio Wales. He currently presents *Newyddion*, S4C's nightly news programme. The Committee noted that his Twitter page is a personal one and on it he describes himself as:

Welshman. Journalist. Broadcaster. Frustrated musician. All opinions are my own.

The Committee considered Mr Hain's significance in political life. He was a member of the Labour government from 1997 to 2008, as Welsh Secretary, Northern Ireland Secretary and Secretary of State at the Department of Work and Pensions. He also held posts in the Department of Trade and Industry, the Foreign Office and was Leader of the Commons.

The Committee noted the wording of Mr ap Iorwerth's tweet:

"@PeterHain All the best, Peter. You've made a huge contribution, and will continue to do so, I'm sure."

The Committee noted that this tweet recognised but did not evaluate Mr Hain's contribution to political life. The Committee considered it to be an important point that no value judgement was made on the nature of his contribution. The Committee agreed that the comment did not explicitly or implicitly express support for any political party.

The Committee noted that the Severn Barrage project was a topic of public interest and some contention. However, the Committee agreed that the tweet showed no endorsement of the project nor of Mr Hain's future role promoting it. The Committee accepted that the references in the tweet to the "huge contribution" that Mr Hain had made, and the presenter's comment that he "will continue to do so", were references to Mr Hain's general contribution to political life.

The Committee therefore concluded that the audience's perception of due impartiality would not have been impacted negatively by the presenter's Twitter comment, and nor was there a breach of the Conflicts of Interest Guidelines.

While the Committee was satisfied that the Editorial Guidelines had not been breached in this case, the Committee agreed that the complaint served as a reminder of the care which is needed when commenting in a public forum such as Twitter.

Finding: Not upheld

News Bulletins, BBC Radio 4, 29 May 2012

1. Background

On 29 May 2012 BBC Radio 4 reported on protests at the Globe Theatre in London, in its news bulletins within the *Today* programme. The protests took place during a performance of *The Merchant of Venice* by Israel's Habima theatre company. This is what was said in the 8am bulletin:

"One man was arrested when protestors tried to disrupt a performance by Israel's Habima theatre company in London last night. About twenty people unfurled banners and displayed a Palestinian flag during a performance of 'The Merchant of Venice' at the Globe Theatre. The Habima company has been criticised for performing for Jewish audiences in the Occupied Territories."

2. The complaint

Two complainants appealed to the Trust. They alleged that the wording of the bulletin implied that protestors objected to the race of Habima's audiences, rather than Habima's performances in settlements in the Occupied Territories. The complainants argued that this misrepresented protestors as being anti-Semitic and misled the audience as to the reasons for the protests.

One complainant stated that the reason for the protest was "Habima's complicity with Israel's breaches of international law in respect of the illegal settlements in the West Bank – NOT that their audiences are Jewish". The complainant who identified himself as one of the protestors expressed his outrage. The other said this was inaccurate, as follows:

"The Habima Company is not being criticised for performing to Jewish audiences in either the occupied territories or anywhere else in the world. Nor, strictly speaking, is it being criticised for performing in the occupied territories themselves. The Habima Company is being criticised for performing in illegal Israeli settlements in the West Bank – i.e. on land that has been taken, against international law, from Palestinians, and to which the Palestinians no longer have access. The Habima Company is also being criticised because other Israeli theatre companies and actors have refused to perform in these settlements, as they do not wish to support Israel's illegal occupation of Palestinian land, and they believe that Habima's performances in these settlements undermine their peaceful protest against the occupation. The Habima Company is also being criticised because it is being promoted by the Israeli government as an ambassador for the Israeli state and receives nearly a third of its funding from the Israeli government. Protestors object to the use of culture by the Israeli state to whitewash and side-step the real issue – i.e. its human rights abuses against Palestinians – in an attempt to present a civilised face to the world."

Both complainants saw the wording of the script as a smear and considered they had been portrayed as anti-Semitic as both had publicly criticised the Habima company.

The Editor of the BBC Radio Newsroom responded at Stage 1 to both complainants. He accepted that the final sentence was not scripted carefully enough. He said that there was "a lack of clarity which is perhaps an invitation to the listener to misunderstand what we were trying to say". He also said it would have been better for the report to have said "The Habima company has been criticised for performing in settlements in the Occupied

Territories – settlements which are considered illegal under international law.” He apologised for any misunderstanding that may have arisen.

The complainants did not find the apology acceptable. They believed this was a serious breach of the BBC’s guidelines on accuracy and impartiality and they asked for a full broadcast and online apology.

The Editorial Complaints Unit (ECU) responded at Stage 2. The ECU agreed that the line “could and should have been scripted more clearly” but the ECU was “not however convinced that it amounted to a misrepresentation of those who have criticised Habima”.

The ECU said that the protests arose from Habima’s decision to play in Israeli settlements in the Occupied Territories. Whilst the terms “Israeli” and “Jewish” were not synonymous, the ECU said that its understanding is that the occupants of the settlements were universally Israeli and universally Jewish. It was therefore “overwhelmingly likely” that the audiences at Habima’s performances in the Occupied Territories were Jewish.

The ECU said the piece did not say that Habima was criticised for playing to Jewish audiences, but for playing to Jewish audiences in the Occupied Territories. This suggested that the location of the audiences had inspired criticism, “not simply the fact that they are Jewish”. The ECU concluded that, while more information would have been useful, the sentence was not materially misleading. The ECU did not uphold the complaint.

Appeal to the BBC Trust

The Trust Unit received two appeals relating to this item and the Editorial Standards Committee agreed at its 6 September 2012 meeting that it would be appropriate to consolidate the appeals so that the range of issues could be considered together.

The complainants believed the broadcast was not duly accurate and that the absence of accurate reasons for the protests led to the item being materially misleading. They requested a public apology and correction.

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

- The protests related to Habima’s performances in settlements in the Occupied Territories as these settlements are considered illegal under international law. The protest was about the location.
- The ethnic make-up of the audiences in the settlements was not a factor for those criticising the Globe’s decision to host Habima. The ECU’s statement that the audiences were “overwhelmingly likely” to be Jewish was also criticised as there was a possibility that the audiences in the settlements might have included tourists, for example, who were not Jewish. A complainant also maintained that the ECU “propagated the lie” that the protests were about Jewishness in some measure by saying it is “not simply the fact that they were Jewish” that has “inspired criticism”.
- The ECU was incorrect to argue that listeners would have understood “Jewish audiences in the Occupied Territories” to mean illegal settlements and so the protest would have been recognised to be against the illegality of the settlements rather than the fact that the audiences were Jewish. This was not clear and not precise on a controversial matter.

- The omission of accurate reasons for the protest was materially misleading and led to unfairness towards the protestors and those who publicly criticised the company who were effectively being portrayed as being anti-Semitic.
- To have used the word “Jewish” was irrelevant and could be construed as a deliberately provocative action by the BBC which undermined its impartiality. Using the word “Jewish” implied that the story was about race or religion, which it was not.
- This was a controversial matter under BBC guidelines on impartiality. Implying that the criticisms were about race or religion required a right of reply for the protestors.

3. Applicable Editorial Guidelines

The following editorial guidelines are applicable to this case:

Section 3 – Accuracy

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

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

Section 4 – Impartiality

4.1 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.

4.4.7 When dealing with ‘controversial subjects’, we must ensure a wide range of significant views and perspectives are given due weight and prominence...

Section 6 – Fairness, Contributors and Consent

6.1 The BBC strives to be fair to all – fair to those our output is about, fair to contributors and fair to our audiences. BBC content should be based on respect, openness and straight dealing. We also have an obligation under the Ofcom Broadcasting Code to “avoid unjust or unfair treatment of individuals or organisations in programmes”... material inaccuracies in the way people are referred to, or featured, may risk causing unfairness.

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 the subsequent comments received from one complainant and the Editorial Complaints Unit.

The Committee considered the complainants’ allegation that the protests were inaccurately described as relating to the race or religion of Habima’s audiences, rather than their performances in illegal settlements. It noted the relevant line:

“The Habima company has been criticised for performing for Jewish audiences in the Occupied Territories.”

The Committee noted that by setting this in the past the BBC had not directly said this was the motive of the protestors at the Globe, but the Committee accepted that it was possible listeners would not have made that distinction.

The Committee noted that Habima is considered to be the national theatre of Israel. It commits itself to “the promotion and perpetuation of the Hebrew language and its culture”. Its goals include promoting and strengthening dialogue between all Israelis, strengthening ties with Jews and Israelis abroad and performing “throughout the country, giving the Israeli public, from anywhere at any age, the opportunity to participate in theatre – Jews and Arabs, secular and religious, young and old”.

The Committee noted that Habima was invited to perform at London’s Globe Theatre on 28 and 29 May 2012 as part of the RSC-led World Shakespeare Festival. The performance was a Hebrew-language production of *The Merchant of Venice*.

The Committee noted that in January 2012 the campaign group *Boycott From Within* sent a letter of protest to the Globe. It said that in the past year two Israeli settlements (Ariel and Kiryat Arba) on the West Bank had set up “halls of culture” and had invited theatre groups to perform there. The letter claimed that many theatre professionals had declined, arguing that the West Bank settlements had been established in violation of international law. Habima, however, had stated its intention to perform there. The letter also stated:

“It is especially noteworthy that Ariel and Kiryat Arba, like most settlements, are surrounded by walls and fences, closely guarded by soldiers and their own armed security personnel. A theatrical performance in a settlement is by definition a performance to an exclusively Israeli audience, with Palestinians living even in the nearest village being physically excluded from any chance of attending.”

The Committee noted that the Globe responded with an open letter, stating its respect for the passion and sincerity of the campaigners’ arguments. The letter explained that the decision had been a difficult one but the Globe intended to stage a celebration of languages, rather than a celebration of nations or states. The letter said that Habima was “the most well-known and respected Hebrew-language theatre company in the world” and that the festival’s commitment to universality was reflected in the performance of *Richard II* by the ASHTAR Theatre of Ramallah.

The Committee noted that in March 2012 a further open letter was sent by 37 actors, directors and theatre professionals to the Guardian newspaper citing Habima’s “shameful record of involvement with illegal settlements in Occupied Palestinian Territory”. This letter asked the Globe to withdraw the invitation so that the festival was not “complicit with human rights violations and the illegal colonisation of occupied land”.

The Committee considered whether the Guidelines on Accuracy had been breached in two respects: (i) First, the Committee considered whether the script had been written in clear, precise language; (ii) Second, the Committee considered whether the Guidelines on Accuracy had been breached with regard to misleading the audience.

In relation to (i), whether the script had been written in clear, precise language, the Committee concurred with the Editor of the BBC Radio Newsroom who accepted at Stage 1 that the sentence was not scripted carefully enough. The Committee noted, however, that this had not been upheld as a breach of the Guidelines at Stage 2. The Committee accepted the complainants’ argument that the main thrust of the protests related to the view that the settlements are illegal and the objection to the company was, in large part,

because of the performance in the settlements, and therefore that this should have been made clear in the news report. The Committee concluded that the script was not written in clear, precise language and the Accuracy Guidelines had been breached in this regard.

In relation to (ii), whether the Accuracy Guidelines had been breached with regard to misleading the audience, the Committee noted the complainants' allegation that the audience may have concluded that the protestors were anti-Semitic. The Committee noted the ECU's statement at Stage 2 that the piece did not say people were protesting because Habima played to Jewish audiences, but "to Jewish audiences in the Occupied Territories". The Committee noted the ECU's statement that "The latter part of the sentence is important – it suggests that it is the question of where these particular audiences are that has inspired criticism, not simply the fact that they are Jewish." The Committee also noted that a complainant argued one could equally say that the reference to Jewish audiences was "just as capable of 'suggesting' to audiences that the issue is about race and about anti-Semitism". The Committee noted too this complainant's argument that the BBC had breached its own published advice for journalists⁶ which states "Be careful over whether you mean 'Israeli' or 'Jewish': the latter might imply that the story is about race or religion, rather than the actions of the state or its citizens."

The Committee noted the complainants said respectively:

"the illegal settlements are occupied exclusively by Jewish Israelis on illegally-occupied Palestinian land"

and:

"There is also a possibility that the audiences might have comprised tourists - from Europe, the US, China or anywhere - who were not Jewish."

The Committee agreed that whilst it was possible there were tourists in the audiences, overall the audiences probably were Israeli and probably were Jewish. The Committee considered it was not knowingly misleading to describe the audiences as Jewish.

The Committee appreciated that the complainants were making a broader point which was that this statement was not only inaccurate in not setting out what the protests were about in clear precise language but was misleading and gave the impression that the protests were about race and religion and about the audience being Jewish. They noted the view of one complainant that:

"The ethnic make-up of the audiences in the settlements was not a factor for those criticising The Globe's decision to host Habima – it was the *location*, and only the location, of where those plays were performed that was of concern to Habima's opponents."

However, taking this broader point into account, the Committee did not agree that the report was knowingly misleading. In the view of the Committee the *Today* programme audience was generally knowledgeable about the Middle East. The Committee considered that in linking the fact that the company was performing to Jewish audiences to the fact that this was in the Occupied Territories, the programme had provided enough information to alert listeners to the point that the criticism was not simply about the fact the company was performing to Jewish audiences but was doing so in the Occupied Territories. Therefore, the Committee concluded that the report would not have materially misled its audience and did not distort known facts, and the Committee did not uphold the complaint on this point.

⁶ http://news.bbc.co.uk/1/hi/in_depth/middle_east/israel_and_the_palestinians/key_documents/6044090.stm

The Committee then considered the complainants' allegations that the report was unfair to them in implying this was about anti-Semitism.

First the Committee considered whether it was appropriate to take 'first party' fairness complaints – that is a complaint alleging that someone (the 'first party') has personally been treated unfairly in BBC content. The Committee accepted that the complainants had protested publicly outside the Globe Theatre. The Committee agreed it should consider the complaints on fairness.

The Committee noted that they had agreed that in linking the fact that the company was performing to Jewish audiences to the fact that this was in the Occupied Territories the programme had provided enough information to alert listeners to the point that the criticism was not simply about the fact the company was performing to Jewish audiences. The Committee concluded that, given the likely knowledge of *Today* listeners, the audience would not have concluded from this one sentence in the wider context of a brief report that those who had criticised the company, including those who had been linked with organising the Globe protest or who had protested at the Globe were motivated by anti-Semitism. The Committee was satisfied that there had been no material inaccuracy in referring to critics (including the protestors) which would have caused a breach of the BBC's Fairness Guidelines. It agreed that a right to reply was not necessary to achieve Fairness in respect of these complaints and that a broadcast correction and apology was not required.

Finally the Committee considered whether there had been a breach of the Guidelines on Impartiality in the context of the allegation that the word "Jewish" was irrelevant and "could be construed as a deliberately provocative action by the BBC, which is supposed to be impartial". It noted that the complainant felt that the omission of the explanation that this was about performances in illegal settlements in the Occupied Territories led to bias.

The Committee began by considering whether a performance by the Habima company at the Globe was a controversial topic. The Committee appreciated that to those protesting against the performance this was highly controversial. It agreed the subject was topical and to those who had a particular link to the Middle East might well be sensitive. However, it could not conclude that there was a high level of public and political contention and debate about it in the UK or was a subject of intense debate or particular importance to a nation, region or area of the UK. This was a one-off performance and, notwithstanding the feelings of those involved, this topic could not in the Committee's view be considered to be highly contentious in the UK. The Committee therefore concluded that the performance by the Habima company at the Globe was not a controversial matter under the Guidelines.

Notwithstanding this conclusion, the Committee noted that the report must be duly impartial. The Committee noted it had upheld a breach of the Accuracy Guidelines with regard to the omission of a clear and precise explanation that the criticisms were about performances in settlements regarded as illegal. The Committee noted too the concerns about the inclusion of the word "Jewish" but also noted that the item had explained these performances were given in the Occupied Territories. The Committee did not consider this short item was lacking in due impartiality.

The Committee considered the complainants' request for an on-air apology but concluded that this matter had been resolved at Stage 1 when the Editor of the BBC Radio Newsroom had acknowledged the shortcomings and apologised for any misunderstanding that may have arisen. Given that the Committee had not upheld the points of complaint relating to misleading audiences, or to the Fairness and Impartiality Guidelines, the Committee concluded that it would be disproportionate to make an on-air, or online apology for the scripting of this item.

Finding: Upheld in part with regard to Accuracy, not upheld with regard to Impartiality and Fairness.

Formula 1 – The Monaco Grand Prix, BBC One 27 May 2012 and Formula 1 website

1. Background

The F1 Forum is a post-race forum of analysis and discussion presented by Jake Humphrey alongside a panel of experts and pundits.

The Forum follows live race coverage which has been broadcast on BBC One, and is available on the BBC website and via the red button service.

On 27 May 2012 the Forum was broadcast at 3.15pm, after the live coverage of the Monaco Grand Prix, on the BBC Red Button service via satellite and cable. On the Freeview Red Button Service it was broadcast at midnight.

BBC Red Button interactive services are available on all three digital platforms (Freeview, satellite and cable), but there are differences between the way they operate. Cable and satellite viewers usually can receive three additional streams, but Freeview now only supports one additional stream because of bandwidth restrictions.

The complainant said that although the F1 Forum is advertised by the BBC and promoted by the presenters of F1 coverage on BBC television networks with the line “hit the red button now for the F1 Forum”, when you switch over to the Freeview red button service the Forum does not appear.

The complainant referred in particular to the lack of a Forum on the Freeview stream after the Monaco Grand Prix on 27 May 2012.

2. Complaint

Stage 1

In her original complaint of 13 May 2012 the complainant said that the presenter of the live television coverage of the Spanish Grand Prix that day had trailed at the end of the programme the broadcast of the F1 Forum on the red button service. When she had switched to the red button service on Freeview, however, the F1 Forum was not there.

BBC Audience Services replied and explained that, due to bandwidth restrictions, only one interactive stream is available on the red button service on Freeview. A decision was taken to show *Final Score* on this red button stream as there were several critical football matches taking place that day (the last day of the season).

The complainant said in her response that promising to show a programme, advertising it live on air and getting presenters to direct viewers to that programme and then replacing it with chat about football showed a lack of respect for the viewers.

An exchange of emails followed in which the complainant asked if the F1 Forum would be appearing on the Freeview red button service that weekend (the weekend of the Monaco Grand Prix on 27 May). She also said that if a second red button stream on Freeview returned for the BBC Olympic coverage, this would show discrimination against F1 viewers.

BBC Audience Services said that unfortunately the F1 Forum and post-race analysis would not be available on Freeview after the Monaco Grand Prix but would be available on the

BBC Sport website and the iPlayer. They explained that there would indeed be a second red button stream available on Freeview during the Olympics showing BBC Olympics content. After a further email from the complainant BBC Audience Services provided an address should the complainant wish to escalate their complaint to Stage 2.

The complainant requested an email rather than a postal contact for Stage 2. She also said that if the F1 Forum was not going to appear on the red button service on Freeview, the presenter should explain this instead of saying "hit the red button now for the F1 Forum".

The complainant contacted BBC Audience Services again on 27 May 2012 (after the Monaco Grand Prix had been broadcast). She said the presenter at the end of the television programme had trailed the F1 Forum with the words 'hit the red button now for the F1 Forum' but it did not appear on Freeview. This was misleading to viewers, she said.

There followed a further exchange of emails between the complainant and BBC Audience Services reiterating the points outlined above. The complainant concluded that the BBC had failed to address her complaint. She said instead of the F1 Forum which had been trailed by the presenter, over eight hours of Springwatch was broadcast on the Freeview red button stream.

BBC Audience Services replied on 1 June 2012 saying that they had nothing to add to their previous correspondence and they provided an email address for the Chief Adviser and Business Manager, BBC Sport so the complainant could escalate her complaint to Stage 2 by email.

Stage 2

The complainant said that the F1 Forum did not appear on the Freeview red button service as promoted. In particular, the complainant referred to the lack of a Forum immediately following the Monaco Grand Prix on 27 May 2012. Instead, the Freeview red button service broadcast over eight hours of Springwatch, showing a bird's nest.

She said that:

- The BBC stated pre-season on their website that a Forum would be broadcast after every race – whether live or highlights.
- The presenters (and in particular the presenter on 27 May) promoted the Forum on air.

The Chief Adviser and Business Manager, BBC Sport replied and said that on 27 May 2012 the F1 Forum was broadcast on Freeview at midnight. Because of capacity constraints there is only limited space for additional programming on Freeview. He added that the BBC took the decision to broadcast live coverage of the European Gymnastics Championships instead of the F1 Forum on the afternoon of 27 May.

Schedulers, he said, faced difficult decisions – in this instance between providing more content for the committed F1 fans, or live sport that appeals to a slightly different audience demographic. He said that in addition, BBC Sport has to share the limited red button capacity on Freeview with other areas of BBC output, in this case BBC Natural History. He added that Springwatch has an audience as sizeable, loyal and committed as the audience for Formula 1.

He concluded by confirming that the Formula 1 Forum was broadcast on Freeview after the previous live races broadcast by the BBC (China and Spain) and would again be on Freeview after the next live race broadcast by the BBC (the European Grand Prix on 24 June).

The complainant replied saying that on the issue of the Springwatch audience, only the viewing figures for the eight hours' broadcast of the bird's nest would be a fair comparison to the F1 Forum, not the programme viewing figures. She said that the Forums for Spain and China were not live, nor were they advertised.

She highlighted a quote from the BBC's website ('Formula 1 on the BBC', BBC Sport website):

"RED BUTTON

There will be an additional interactive analysis programme following on from the end of the BBC One coverage of each race."

She took this quote to mean that the Forum would follow on from the end of each of the 20 races. She said that the response to her complaint had been inaccurate, had dismissed statements made on the BBC website, and had made light of the fact that the Forum, while being advertised by the BBC and promoted by the presenters with the words 'hit the red button now for the F1 Forum', has yet to actually appear on Freeview as promoted.

The Chief Adviser and Business Manager, BBC Sport stressed that audience size was only one factor which determined the scheduling of programmes on the BBC. His previous reply simply noted that Springwatch spin-off programming on the red button is also in demand by licence fee payers – just as the F1 Forum is well-liked by F1 fans.

He added that the F1 Forum was only provided after the BBC's live coverage of F1 races, not after highlights shows. The quote the complainant referred to, he said, from the BBC website, is preceded by the following statement:

"The BBC's red button interactive TV service will broadcast live coverage of all on-track sessions - Friday and Saturday practice, qualifying and race – from the 10 races that are live on the BBC.

There will be an additional interactive analysis programme following on from the end of the BBC One coverage of each race."

He concluded by saying that he had not implied that the F1 Forums were shown live, but that they followed live race coverage on BBC One.

Appeal to the Trust

The complainant said that although the F1 Forum is advertised by the BBC and promoted by the presenters of F1 coverage on BBC television networks with the line "hit the red button now for the F1 Forum", when switching over to the Freeview red button service the Forum does not always appear. This happened, she said, after the Monaco Grand Prix on 27 May when the Forum was trailed by the presenter but did not appear on the Freeview red button.

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

Point 1: The BBC said on its website that a Forum would be broadcast after every race, whether live or highlights. This has not happened on the Freeview stream.

Point 2: The presenters promoted the Forum on air, however the Forum does not appear on the Freeview red button service as promoted.

3. Applicable Editorial Guidelines

The following editorial guidelines are applicable to this case:

Section 3 - Accuracy

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

3.4.11 We must not knowingly and materially mislead our audiences with our content. We may need to clarify the nature of some content by labelling (for example, verbally, in text or with visual or audio cues) to avoid being misleading.

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.

The Committee began by considering the complainant's first point – that information provided by the BBC's website relating to the F1 Forum was inaccurate. The Committee noted that the complainant had highlighted the following wording on the BBC's Formula 1 website:

RED BUTTON

There will be an additional interactive analysis programme following on from the end of the BBC One coverage of each race.

The Committee noted the point made by the Chief Adviser and Business Manager, BBC Sport, that the full wording is:

RED BUTTON

The BBC's red button interactive TV service will broadcast live coverage of all on-track sessions - Friday and Saturday practice, qualifying and race - from the 10 races that are live on the BBC.

There will be an additional interactive analysis programme following on from the end of the BBC One coverage of each race.

On race day, viewers will be able to choose from three different video streams: the main network feed with a choice of commentary from BBC One and BBC Radio 5 live; a split screen comprising the main network feed, an in-car camera feed and leaderboard; or rolling highlights.

The 2012 season will be available to view on the BBC HD channel.

Some red button coverage may not be available on Freeview - further details here.

The Committee noted that the disclaimer at the bottom this text linked to another page which carried the BBC Red Button schedule and a further link to a page titled "Frequently Asked Questions About Red Button Coverage", which includes information about why some programmes are not available on Freeview. There is no archive available to see how the Red Button schedule appeared on the date in question; however, the Committee noted for example how the Red Button schedule for July had appeared:

Thursday 19 July Golf - The Open Championship

0900-2000 Extensive live coverage from Royal St. Lytham including Live Leaderboard 0900-2000 Live coverage of holes 9, 10 and 11 **(Not available on Freeview)**

Friday 20 July Golf - The Open Championship

0900-2000 Extensive live coverage from Royal St. Lytham including Live Leaderboard 0900-2000 Live coverage of holes 9, 10 and 11 **(Not available on Freeview)**

Saturday 21 July Golf - The Open Championship

1000-2000 Extensive live coverage from Royal St. Lytham including Live Leaderboard 1030-2000 Live coverage of holes 9, 10 and 11 **(Not available on Freeview)**

Triathlon 1720-1850 Triathlon - Live coverage of the World Series from Hamburg, Germany. **(Repeat available on Freeview 2300-0030)**

The Committee agreed that the BBC's Formula 1 site contains adequate information for viewers about the Red Button schedule and which streams are available on the various platforms. The Committee concluded that enough information had been provided about the limitations of the Red Button service on Freeview and that the website was not inaccurate.

The Committee therefore did not uphold the element of the complaint relating to the accuracy of the BBC's Formula 1 website.

The Committee then considered the second point raised by the complainant – that the information given out on air relating to the availability of the F1 Forum on the Freeview Red Button service was inaccurate.

The Committee noted that the presenter concluded the programme broadcast on 27 May 2012 with the words:

But we're not done here in Monaco – press red for this kind of thing:

(TRAIL FOR FORUM).

Do please press the red button if you'd like to join us on the F1 Forum.

The Committee noted that the presenter did not differentiate between what was available on the red button service on satellite and cable, and what was available on Freeview. The Committee noted that Freeview users would have been able watch the Forum coverage at midnight.

The Committee noted the response from the Chief Adviser and Business Manager, BBC Sport, who said that:

"...as is often the case across the BBC's sports productions (e.g. Wimbledon), the pressure on time is such that opportunities to explain the full Red Button schedule are extremely scarce."

The Committee noted that this difficulty is also referred to on the "Frequently Asked Questions About Red Button Coverage" web page:

Unfortunately, some red button events are not available on Freeview. This is due to limited bandwidth on this platform. Our billings always reflect these instances where possible. We always ask TV presenters to make this clear when promoting red button content but sometimes due to time constraints this is not conveyed in full.

We are in regular contact with our presenters and always aim to ensure they are up to date with what programmes are available on Freeview. Please accept our apology if any information they gave out on air was incorrect.

The Committee noted the acknowledged difficulties but concluded that the programme could have clarified that the F1 Forum was not available on the Freeview red button service in just a few words, and that, given the size of the Freeview audience, this would not have been unreasonable. The Committee agreed that the Accuracy Guidelines had been breached in that the information which was broadcast was not clear and precise regarding the availability of the F1 Forum on the Freeview Red Button service.

The Committee noted that in future the potential for a repeat of this breach was removed as the BBC proposed to reduce the number of video streams available on satellite and cable from nine to the one stream currently available on Freeview in the latter part of 2012. In the meantime, the Committee agreed that the BBC should remain mindful of the need for accuracy in promotional statements it makes about the availability of Red Button services.

Finding: Upheld in part.

Football Focus

1. Background

The complaint related to an edition of *Football Focus* which was presented from a football stadium and included an interview with the former Brazilian footballer Ronaldo, who has put on weight since his playing days. Following the interview, the programme returned to the stadium by focussing on two of the fans in the crowd who appeared to be overweight. The presenter said: "Looks like those two fellows are on the Ronaldo diet."

2. The complaint

The complainant emailed the BBC Trust following the decision of the BBC's Editorial Complaints Unit not to uphold his complaint. He said he believed that the presenter had made an unacceptable comment when the camera focussed on two fans following the interview with Ronaldo. He said that by saying that these fans looked as though they were on "the Ronaldo diet", the presenter had insulted both them and Ronaldo. He said he believed the comment was a form of bullying and was disrespectful.

3. Applicable Editorial Standards

The following editorial guidelines are applicable to this case:

Section 5 – Harm and Offence

Introduction

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

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

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

Generally Accepted Standards

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

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

Intimidation and Humiliation

5.4.32 BBC content must respect human dignity. Intimidation, humiliation, intrusion, aggression and derogatory remarks are all aspects of human behaviour that may be discussed or included in BBC output. Some content can be cruel but unduly intimidating, humiliating, intrusive, aggressive or derogatory remarks aimed at real people (as opposed to fictional characters or historic figures) must not be celebrated for the purposes of entertainment. Care should be taken that such comments and the tone in which they are delivered are proportionate to their target.

4. The Committee's decision

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

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

This appeal raised issues requiring consideration of the Guidelines relating to Harm and Offence and, in particular, whether the programme had caused unjustifiable offence.

The Committee began by looking at how the comment had come to be made. It noted that this comment followed a pre-recorded interview between Gary Lineker and the former Brazilian footballer Ronaldo. The interview was intercut with highlights of Ronaldo's career as a player and it was clear that he had put on weight since his playing days. The camera then cut to two fans and the presenter remarked:

"Looks like those two fellows are on the Ronaldo diet."

The Committee noted that the presenter, Dan Walker, was only aware of what pictures would be chosen for returning to the stadium with seconds left of the Ronaldo interview. It noted that the presenter Mr Walker had overheard an off-the-cuff remark made during a discussion between the programme's editor and director via talkback about the two fans, and thought that this would be a light-hearted line to use at the end of the interview despite not having seen the pictures.

The Committee noted that both BBC Complaints and the editor of Football Focus wrote to the complainant at Stage 1 of the complaint process to say that no offence had been intended. The Committee also noted that the editor of *Football Focus* had sought to resolve the issue by saying he had discussed the matter with the presenter and had put in place measures to make sure that the programme struck the right tone in future.

The Committee was also pleased to note that Mr Walker had sought to resolve the issue by e-mailing the complainant to apologise personally for any offence caused. It also noted that the presenter had recognised that his words were ill-judged.

The Committee discussed the fact that, despite the acknowledgement from the presenter that the comment was ill-judged and the programme team's attempts to resolve the issue, the Editorial Complaints Unit had decided at Stage 2 of the complaints process that on balance it did not think the comment went beyond what might be considered generally acceptable on a programme such as *Football Focus*.

The Committee considered that the actions of the programme team in response to the complaint could have led to the complaint being considered to have been resolved at Stage 1. However, the complainant had proceeded to the second stage of the complaints process and the Editorial Complaints Unit had not upheld the complaint. The Committee did not consider that in isolation an off-the-cuff remark which implied Ronaldo was overweight would have been in itself offensive given he is a public figure and his weight and level of fitness as a former player were of interest. However, the Committee felt that the comment referring to the two identifiable fans who are not public figures was humiliating, and did not meet generally acceptable standards in that it caused unjustifiable offence.

Finding: Upheld.

Application of expedited complaint handling procedure at Stage 3

The Committee's decision

The Committee considered an appeal against the Head of Editorial Standards' decision to apply the expedited complaint handling procedure to future appeals and handling complaints from a complainant. Application of the expedited complaint handling procedure means that, for a period of up to two years, although the Trust will continue to read and consider complaints from the complainant, it will investigate them in accordance with the usual Complaints Procedure that applies only if the future complaint does not meet any of the conditions in paragraph 2 of Annex B of the Expedited Complaints Procedure⁷, and in fact raises an issue of breach of any relevant Guidelines or Policies.

The Committee noted that the complainant had brought seven appeals to the BBC Trust in the past four years and that five of these were either not upheld or not accepted for consideration on appeal:

- Life on Mars, BBC One, 6 March 2007 (not upheld, apology for delays at Stage 3)
- Ashes to Ashes, BBC One, 14 February 2008 (appeal not accepted)
- Satanic Verses Affair, BBC Two, 7 March 2009 (appeal not accepted)
- Dragon's Eye, BBC Wales, 28 January 2010 (appeal not accepted)
- Wales Today, BBC Wales, 12 March 2009 (appeal not accepted)
- Wales: Power and the People – Back to the Future, BBC Wales, 23 July 2007 (endorsed BBC's uphold on Impartiality, upheld with regard to Accuracy, not upheld with regard to complaint handling)
- *BBC News at Ten*, BBC One, 25 January 2008 (endorsed BBC's uphold on Accuracy, not upheld on Impartiality, apologised for delay at Stage 1)

The Committee noted that since being told by the Head of Editorial Standards in 2009 of the decision not to accept his appeal regarding Ashes to Ashes, the complainant had continued to complain about the handling of this and subsequent appeals to the Trust. The Committee was aware that the Trust Unit had not followed the correct procedure in handling his appeal regarding Ashes to Ashes, but that this had been rectified once the complainant had raised the issue and an apology had been given by the Chairman of the BBC Trust. The Committee noted that apart from a delay in the handling of the Life on Mars Appeal, for which an apology had been given on behalf of the Chairman of the ESC, no further complaints of mishandling by the Trust had been upheld.

The Committee noted that of the two successful appeals, one had only been upheld partially on the use of unlabelled library material from Orgreave in a programme about Wales and the other was upheld in relation to the handling of the complaint at Stage 1, rather than the substance of the complaint. The Committee agreed that the points of appeal which were upheld were outweighed in both number and significance by those which were either not upheld or not accepted on appeal.

The Committee noted that the complainant had not submitted a final appeal against the decision by the Head of Editorial Standards to place the complainant upon the expedited procedure but had submitted instead various letters in which he raised concerns and made enquiries about the decision. The Committee noted that the Head of Editorial Standards' decision was communicated to the complainant on 30 July 2012 and that the

⁷ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/e3_complaints_framework.pdf

deadline for submitting an appeal, which was initially set at 13 August 2012, was extended at the complainant's request to 24 August 2012. The Committee noted that the deadline was extended again to 13 September 2012 when the Trust Unit became aware that they had initially given the complainant 10 working days to reply instead of the 20 working days required under the Complaints Framework. The Committee expressed its regret at the original error but agreed that compensatory time had been allowed. In particular, the Committee noted that when the Trust Unit became aware of its error on 15 August 2012 it had allowed the complainant 20 working days from that date to submit an appeal against the Head of Editorial Standards' decision, in addition to the time that had already passed from 30 July 2012. The Committee agreed with the Trust Unit's decision to take the complainant's correspondence up to the point of the 13 September 2012 deadline as the basis for his appeal. The Committee noted that the complainant had been advised by the Trust Unit on 13 September 2012, the deadline for receipt of his appeal, that his letter of 10 September 2012 would be taken as the basis for his appeal against the application of the expedited procedure.

The Committee noted that the complainant, in his letter of 10 September, had alleged negligence and incompetence on the part of the Head of Editorial Standards and had argued that on this basis the expedited procedure should not be applied to him. The Committee agreed that there was no substance to the complainant's allegations and it therefore did not recognise this as a ground upon which to challenge the decision to apply the expedited procedure to him.

The Committee noted that the complainant had asked if he could make a verbal representation to the Committee. The Committee noted that its procedure allowed for oral hearings at the Committee's discretion⁸. The Committee, having considered the complainant's points, agreed that it was not necessary to have an oral hearing for this appeal and that the material before it, including the decisions on the seven previous appeals and three letters from the complainant in response to the application of the expedited procedure, was sufficient for it to come to a decision.

The Committee noted the complainant's view that the Head of Editorial Standards' decision to apply the expedited procedure was a personalised one. The Committee could find no evidence to support this allegation and agreed that it was a normal part of the role of the Head of Editorial Standards to make such decisions.

The Committee then considered the basis upon which the expedited complaint procedure could be applied.

The Committee noted that the complainant queried the wording of paragraph 1.3.2 of the Complaints Framework. The Committee agreed that it could be clearer and asked the Trust Unit to suggest wording which fully conveyed the application of the procedure as set out in Annex B. They agreed it was not simply to be used in cases where the complainant persistently and repeatedly complained about certain matters but persistently and repeatedly made complaints that fall under paragraph 2 of Annex B.

The Committee noted that Annex B to the Complaints Framework states:

The BBC Executive and the Trust may use this Procedure only where a complainant has a history of persistently or repeatedly making complaints which:

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;

⁸ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf

(b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);

(c) use gratuitously abusive or offensive language;

(d) are shown on investigation to have no reasonable prospect of success;
or

(e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2).

The Committee noted that the Head of Editorial Standards had cited points (d) and (e) in her decision to apply the expedited procedure. The Committee noted that the complainant had argued that it would have been more appropriate for the Head of Editorial Standards to have cited point (a) if the Head of Editorial Standards argued his complaints were repetitious.

In relation to complaints about handling, the Committee noted that the Director of the BBC Trust had agreed with the Head of Editorial Standards that the expedited procedure could be applied to complaints about handling from the complainant.

The Committee noted its previous findings on the complainant's seven appeals and the outcomes of the handling complaints and agreed that the complainant had persistently and repeatedly made complaints which were appealed unsuccessfully to the BBC Trust following rejection at the previous stage and/or were shown on investigation to have no reasonable prospect of success. The Committee also agreed that the complainant had persistently and repeatedly made handling complaints which, apart from the exceptions noted above, were not upheld and did not have a reasonable prospect of success. The Committee therefore concluded that the criteria for applying the expedited procedure had been met. The Committee agreed that the expedited procedure should be applied to appeals from the complainant, including those relating to handling, for a period of two years from the date of the Head of Editorial Standards' decision (i.e. until 30 July 2014).

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.

Decision at Stage 1 to stop replying to a complainant alleging general bias against men

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

Appeal to the BBC Trust

The complainant wrote to the Trust appealing against BBC Audience Services' decision not to investigate his complaint about anti-male bias in BBC output. He rejected the argument that the BBC could only address concerns about specific broadcasts, saying that the examples were too numerous to list and, in any event, complaints about individual programmes would be dismissed. The complainant also said that he was not interested in his complaint being judged against BBC guidelines, rather he asked for an investigation into general anti-male bias throughout the BBC. In earlier correspondence he had argued that the BBC constantly broadcast allegations and attacks against men while providing no opportunities for them to respond.

In reply, the Trust's Senior Editorial Strategy Adviser 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. 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 Senior Editorial Strategy Adviser said that the BBC had a responsibility to be fair, accurate and impartial across all its output, to provide a right of reply to individuals and groups as and when appropriate, and to ensure that no-one or no one group was unfairly represented. These responsibilities were reflected in the BBC's Editorial Guidelines. If the complainant were to make a specific complaint about a programme, series or individual which crystallised his general concern then it would be possible to consider it. However, as the BBC had explained, the complaints procedure was designed to consider specific complaints where the BBC may have failed in its duty to uphold its publicly stated editorial standards. The Editorial Complaints Procedure specified that the BBC may not investigate a complaint if it:

Fails to raise an issue of breach of the Editorial Guidelines; or

Is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

It therefore seemed reasonable for the BBC to say that it could not respond any further to the complainant's correspondence on this issue. This was because the complainant had not cited an example of specific content which would provide evidence to demonstrate a possible breach of the BBC's guidelines.

The Senior Editorial Strategy Adviser believed that Trustees would be of the view that BBC Audience Services had provided a reasonable response to a non-specific complaint but were not able to respond more specifically without this evidence. For these reasons she did not believe the appeal had a reasonable prospect of success and she did not propose to proceed with it to appeal.

The complainant requested that the Committee review the decision not to proceed with the appeal. He repeated his argument that specific examples of the kind of programming that he was complaining about were dismissed outright by BBC staff and were too numerous to cite. He asked the BBC to be more flexible in its approach to the complaint and disagreed that it would be an inappropriate use of BBC resources, pointing out that at least half of BBC subscribers were men.

The Committee's decision

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

The Committee noted the complainant's allegations but agreed that in the absence of specific evidence for his claims it would be disproportionate for the BBC to investigate any further than it had done. The Committee agreed that an appeal against the BBC's decision to stop responding to the complainant on this issue did not have a reasonable prospect of success.

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

Putin, Russia and the West, BBC Two, January/February 2012 (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.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the BBC's decision not to accept his complaint on the grounds that it had been made outside the time limit of 30 working days.

In his appeal the complainant said that the issues which he had raised in his original complaint were examples of editorial failings that required formal consideration, despite the fact that his original contact with the BBC fell outside the published time limit. The original complaint was submitted on 23 May 2012 while the series which he complained about was last broadcast on 9 February 2012.

In his appeal the complainant said that the integrity of the source material had been compromised by the programme-makers to the extent that it would have an enduring adverse effect on the integrity of British broadcasting. The decision not to entertain the complaint itself represented a serious error of policy in that it gave precedence to procedure over substance. The complainant explained that the delay in contacting the BBC was due to the amount of work he had done, reviewing all four programmes in the series and transcribing each one in order to be sure of his 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 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 noted that, in making the case for the complaint to be accepted, the complainant pointed out that he had done extensive work in its preparation, with the result that any BBC investigation would be very much more cost effective. However, she also noted that, if the Trust were to take the appeal, it would be duty-bound to complete its own investigation and it would be necessary to verify all the information supplied. This was not to cast doubt on the complainant's work – but it would be necessary to ensure that due process was being followed, and that the Trust was being fair to all parties. The Trust's investigation would in all likelihood entail a review of the whole series, commissioning a third party to carry out an independent translation and then assessing any differences between the translations.

The Senior Editorial Strategy Adviser said that the BBC needed to balance the duty to investigate a programme complaint with the need to be pragmatic about cost and outcome. The Head of Editorial Standards accepted that the complainant did not agree with the translations from the original Russian – but she did not believe the examples provided by the complainant supported the inference that the programmes damaged the

integrity of both the BBC and British broadcasting. There needed to be compelling and serious evidence to justify a complaint being accepted so far outside the BBC's timescales. The BBC's editorial complaints procedure required complaints to be submitted within 30 working days of the date on which the content was broadcast. Exceptionally, the BBC Executive may decide to consider a complaint beyond this deadline, but only if it believed there was a good reason for the delay. The Head of Editorial Standards did not consider that the appeal had provided that compelling reason. She therefore did not believe that the appeal had a reasonable prospect of success and did not propose to put it before the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He said that excessive attention had been focussed on procedural matters instead of the core issue, and that it was wrong to ignore the evidence which he had put forward that the series contained serious lapses in editorial standards. The decision not to proceed appeared to assume that there was insufficient prima facie evidence to support the appeal and that further investigation would be a waste of time and money. This was unjustified and relied on the presumption that the only objective was waste avoidance.

The complainant asked the Trust to consider afresh the original cause of complaint and to do so in light of the language in which it was expressed rather than that contained in the Appeal Summary in the Senior Editorial Strategy Adviser's letter. He said this summary was impossible to understand and failed to communicate the cause of the complaint. He said that the only "matter of substance" which the BBC had recognised was the requirement that complaints be made within 30 working days of the date of broadcast. The complainant said that no reasonable person would regard this as the true "matter of substance" engaged by this complaint, which he described as:

- The use of partial quotes to distort meaning
- Putting unspoken words into people's mouths
- Taking clearly spoken words out of people's mouths
- Being blatantly partisan, describing one side as "free" and "democratic" and the other as opposed to these values
- Using mood music to strengthen prejudice.

The complainant said that these were practices commonly used by totalitarian regimes and it was in the interests of British broadcasting standards for the BBC to be seen to be taking the issue seriously.

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 noted the complainant's strength of feeling but it agreed with the BBC and the Head of Editorial Standards that to take the complaint outside the time limit, considering the level of investigation that would be required to respond to the complainant's analysis, would not be appropriate. The Committee noted the complainant's

view that the importance of the issues which he had raised should override the requirements of the procedure. The Committee accepted that, in certain circumstances, an appeal that raises significant and important issues would override considerations of proportionality and cost-effectiveness. However, the Committee was also mindful of the need to ensure that the licence fee was not used disproportionately. Having considered the issues raised by the complainant, the Committee did not consider that they were sufficiently serious or important so as to override considerations of proportionality and cost-effectiveness. In addition, the Committee noted that the complaint was made to the BBC 41 working days late and that, therefore, a significant amount of resources would be required to investigate the complaint at such a late stage.

The Committee noted the allegations made by the complainant but agreed that, taking into account the resources which would be required to investigate whether they had any merit, an appeal against the decision taken at Stage 1 not to accept the complaint so long after broadcast would not have a reasonable prospect of success.

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

Pointless, BBC One, 10 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.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the ECU to reject his complaint that the programme was inaccurate in describing the "storming of the Winter Palace" as a historical happening. Whilst the ECU accepted that the precise events of 1917 might be in dispute, they nonetheless maintained that as a general description of an event that occurred during the Bolshevik Revolution, it met the BBC criterion of "due accuracy".

In his appeal the complainant said that the BBC, by using this reasoning, was colluding in misrepresenting a historical event that was based on what he described as faked evidence. He referred to a number of historians and others in support of his contention, which he said would be fully vindicated in 2017, when documentation about the event was due to be released into the public domain.

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

The Senior Editorial Strategy Adviser explained that the Trust does not adjudicate on every appeal that is brought to it, and part of the Head of Editorial Standards' role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and 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 acknowledged that the complaint engaged the BBC Editorial Guidelines on Accuracy. However, the BBC Executive had said that, while they accepted that the storming of the Winter Palace, as represented in the Eisenstein film, was not necessarily an accurate historical portrayal, the fact remained that forces led by Lenin did take control of the Winter Palace and this was a pivotal event in the Bolsheviks coming to power.

The Head of Editorial Standards noted that guideline 3.1 specifically allowed for situations in which "accuracy" could be interpreted in more general terms. The guideline said:

The term 'due' means that the accuracy must be adequate and appropriate to the output...

It went on to say that the 'due accuracy' required will vary from genre to genre; certainly there would be a difference in how the term would be applied to a quiz programme, compared, for example, to its application in an historical documentary about the formation of the Soviet Union.

The Head of Editorial Standards also noted that guideline 3.2.3 had to be considered in the context of a quiz programme, in which the contestant had simply been asked to name the modern-day country where the event took place. She was clear that viewers with a cursory knowledge of twentieth century history would be aware of what event was being referred to by the term "the storming of the Winter Palace" included in the list of historical

events. She did not believe that they would think that the BBC was specifically endorsing the storming as portrayed in Eisenstein's film.

The Head of Editorial Standards noted that in correspondence the complainant referred to a number of historians who supported his contention. While there were conflicting versions of events, she did not believe this meant that the description of the event in this way was not duly accurate.

In summary, the Head of Editorial Standards made her decision based, not on what might or might not have happened at the Winter Palace, but on whether, by referring to "the storming of the Winter Palace", the programme-makers were meeting the guidelines in terms of 'due accuracy' as applicable to a quiz programme.

In her view they were and therefore she did not believe the appeal had a reasonable prospect of success and she did not propose to put it before the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He said that it was misleading to perpetuate the myth that there was a "storming of the Winter Palace" which represented "Bolshevik wishful thinking" about enjoying majority support in October 1917.

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 noted that the programme had asked contestants to name the modern day countries in which events on the board had occurred. The Committee noted that one of the events on the board was "The Storming of the Winter Palace". The Committee noted this event could be taken as referring to the event of 1917 in which the Winter Palace was captured by Bolsheviks, or to the 1920 theatrical restaging of this event, known as *The Storming of the Winter Palace*. The Committee noted that the Editorial Complaints Unit had accepted that it could be argued that the 1917 event was not a "storming"; however, within the context of this programme it would not amount to a breach of the Accuracy Guidelines to refer to it as such. The Committee agreed that, whether or not the "storming of the Winter Palace" had actually happened, it was accurate to state that Russia was associated with it. The Committee agreed that there was no reasonable prospect that it would uphold a complaint that the Guidelines on Accuracy had been breached in this context.

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

Replay 'wipes': Euro 2012 and other sporting events

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

Appeal to the BBC Trust

The complainant wrote to the Trust saying that he was dissatisfied with the BBC's responses at Stages 1 and 2 of his complaint. His original complaint concerned the use of animated graphics (wipes) to show the transition from live output to replay footage during the BBC's coverage of Euro 2012 and other sporting events. He alleged that such wipes were an opportunity for advertising to be injected into popular sporting transmissions, were unnecessary, appeared too frequently and were flashing, distracting and annoying. He made the following points in his appeal:

- Viewers had for many years been able to recognise replays (eg, on *Match of the Day*) without the need for wipes.
- The wipes were full-screen and flashing.
- The wipes merely told viewers what they already knew. By the same logic, wipes might be used to alert viewers to scene-changes in *EastEnders*.
- Full-screen branded logos were not a "creative means of transferring from live output to replays", as the Chief Adviser and Business Manager, BBC Sport, had stated, but were merely an opportunity for the injection of advertising into sporting transmissions.
- An American marketing consultancy had identified on-screen graphics as the easiest way for event sponsors' branding to be incorporated into TV broadcasts.
- Replay wipes included branded logos, and could contain subliminal advertising.
- The wipes had been inflicted on viewers without consultation.
- The Olympics, Open Golf tournament, Formula One and the Euro 2012 football tournament were all full of advertising logos. He cited 10 occurrences of wipes bearing the Open Golf tournament logo during 9 minutes' coverage on 20 July 2012, and the frequent use of wipes bearing the Olympic rings during coverage of London 2012.
- The BBC had hitherto been a safe haven from TV advertising and similar intrusions, and the use of wipes amounted to "visual pollution".
- Although there was little the BBC could do about RBS Six Nations championship pitch markings bearing the sponsor's logo, that logo was static whereas the wipes were flashing. Replay wipes were distracting and annoying, and appeared out of the blue.

The complainant also said that the BBC Executive's responses to his complaint were "patronising and dismissive".

The Trust's Senior Editorial Strategy Adviser replied to the complainant and explained that the Trust does not adjudicate on every appeal that is brought to it. She said that 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. An Independent Editorial Adviser had viewed examples of the types of sports broadcast which the complainant had cited, and taken screen-shots of the replay wipes in question. The Senior Editorial Strategy Adviser said she had carefully considered the issue and had decided that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

As far as the use of replay wipes was concerned, the Senior Editorial Strategy Adviser noted that the Chief Adviser and Business Manager, BBC Sport, had stated in his Stage 2 response that this practice was common to all broadcasters' coverage of many different sports. In some instances the wipes originated from an external source, for example when the footage was supplied by a host broadcaster. In such cases, the BBC nevertheless had a duty to ensure that the pictures complied with the Editorial Guidelines.

The Senior Editorial Strategy Adviser noted that the complainant had argued that the difference between live footage and replays was self-evident, that such wipes were not used in the past, and that they were unnecessary. However, the Senior Editorial Strategy Adviser did not consider that replay footage was invariably self-evident and replay wipes were necessarily redundant. In her view, BBC Audience Services were right to respond that replay wipes could add clarity during sports coverage. To many viewers they were now part of the grammar of live sports broadcasts, forming a visual 'punctuation mark' during the broadcast.

The Senior Editorial Strategy Adviser also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in paragraph 38(1)(b) of the Charter as a duty that was the responsibility of the Executive Board, and was one in which the Trust did not get involved unless there was a possible breach of editorial standards. It seemed to her that decisions concerning the use of replay wipes – including the frequency with which they were used – were essentially matters of editorial judgment. Therefore they were the responsibility of the BBC Executive, not the Trust. Consequently, she had determined that there was no reasonable prospect of success for the appeal on this point, and it was not appropriate that this point of appeal should proceed to the Trust for consideration.

So far as the content of replay wipes was concerned, the Senior Editorial Strategy Adviser noted that all the wipes bore the logos of the events that were being broadcast (apart from the RBS Six Nations wipe, which bore the emblems of the two competing teams), and that none bore the logo of any event sponsor. She was therefore satisfied that none of the wipes amounted to any form of advertising. She also noted that the BBC was not paid to include any of the wipes. Consequently, she decided that there was no reasonable prospect of success for the appeal on this point, and it was not appropriate that this point of appeal should proceed to the Trust for consideration.

The Senior Editorial Strategy Adviser went on to say that the fact that on-screen graphics had potential commercial value to event sponsors and/or advertisers was immaterial to the question of whether the BBC's output actually amounted to undue promotion or advertising. If, however, replay wipes were to include the logo of the commercial sponsor of a tournament or competition (eg, the Barclays Premier League), the question of whether that logo was unduly prominent would need to be considered against the BBC's Editorial Guidelines. These require programme makers to strike an appropriate balance by

crediting sponsors fairly but without giving them undue prominence. This, however, was not the case in the sports coverage which was the subject of the complaint, where no sponsor was credited.

The complainant also complained that replay wipes could be used for subliminal advertising. In the Senior Editorial Strategy Adviser's view, although the replay wipes were brief, their content was readily discernible, and viewers would have been fully aware of what had occurred. They contained no element of sponsorship. Consequently, she had decided that there was no reasonable prospect of success for the appeal on this point, and it was not appropriate that this point of appeal should proceed to the Trust for consideration.

The Senior Editorial Strategy Adviser noted that the complainant also complained that the wipes were full-screen and "flashing". She said that the use of flashing images was addressed in the BBC's Editorial Guidelines at 5.4.57, which said that the BBC should follow the Ofcom guidance referred to in Rule 2.12 of Ofcom's Broadcasting Code. The Senior Editorial Strategy Adviser noted that the replay wipes were animated rather than static and that the RBS Six Nations wipe contained an element of lustre. However, she had been advised by the Independent Editorial Adviser that none of the wipes contained "flashing lights and/or patterns" within the meaning of Ofcom's Broadcasting Code or guidance notes. Consequently, she had decided that there was no reasonable prospect of success for the appeal on this point, and it was not appropriate that this point of appeal should proceed to the Trust for consideration.

The complainant also suggested that viewers should have been consulted on the use of screen wipes. However, the Senior Editorial Strategy Adviser noted that there was no requirement for the Executive to consult on matters of editorial judgment. She had determined, therefore, that there was no reasonable prospect of success for the appeal on this point.

The Senior Editorial Strategy Adviser said that she was sorry that the complainant found the BBC Executive's responses to his complaint patronising and dismissive. She appreciated that this was a matter of judgement but on reviewing the correspondence, she felt the complainant's concerns had been understood and properly addressed.

The complainant requested that the Committee review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. He made the following points:

- Sports bodies like Fifa were forcing broadcasters to advertise their logos. They were the most commercial organisations in the world. By broadcasting constant streams of their logos, the BBC was guilty not only of advertising but of viewer conditioning.
- The claim that, to many viewers, replay wipes were part of the grammar of sports coverage had no scientific basis and implied that viewers needed to be spoon fed with flashing logos.
- It was wrong to say that replay wipes did not contain sponsorship. The BBC was being forced to use wipes which contained the sports bodies' logos.
- The issue of the use of wipes was a matter of great substance. They were not only advertising but annoying, repetitive, unnecessary and intrusive.

- Sports fans were not stupid. They knew a replay when they saw one and did not need to be conditioned like dogs.
- The Trust had not answered two questions: how did the use of wipes, not just for replays but in general, enhance the viewing experience and was the BBC unable to stop using wipes for contractual reasons?

The Committee's decision

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

The Committee noted that the complainant felt strongly that the BBC should not be using the replay wipes. It noted the responses which had been given by the BBC and the Trust's Senior Editorial Strategy Adviser and agreed that the decision to use such wipes was one of legitimate editorial judgement and was not a matter for the Trust to determine. The Committee noted that the complainant had asked the Trust how the use of wipes in general enhanced the viewing experience, and why the BBC was forced to use such wipes; it agreed that the decision to use or not use wipes was a creative matter for which the Executive was responsible and this was not a matter for the Trust. The Committee was satisfied that the use of sports bodies' logos when showing the sport which those bodies governed did not amount to advertising and there was no reasonable prospect of success for this element of the complaint. The Committee also agreed with the Senior Editorial Strategy Adviser's reasons for concluding that there was no reasonable prospect of success for an appeal on the grounds that the wipes constituted "flashing images" or subliminal advertising.

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

Putin, Russia and the West, BBC Two, 19 January – 9 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.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust to appeal against the decision of the BBC's Executive Editor and Commissioning Editor, Current Affairs TV, not to uphold his complaint which concerned an alleged conflict of interest held by the consultant for the BBC Two series *Putin, Russia and the West*. The complainant argued in his original complaint that the use of the consultant, Angus Roxburgh, who had previously worked for a PR agency retained by the Putin administration, was a contravention of the BBC Editorial Guidelines on Conflicts of Interest.

In his appeal the complainant disputed whether the guidelines allowed simple lines of contact with individuals or organisations featured in the content, as the Stage 2 response claimed, and he pointed out that the individuals and organisations referred to were the Russian government, whose interests the consultant had formerly been paid to represent. The complainant also maintained that the BBC had been brought into disrepute, drawing attention to a demonstration which had taken place outside a screening of the documentary, as well as to various newspaper articles.

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

The Senior Editorial Strategy Adviser explained that the Trust does not adjudicate on every appeal that is brought to it, and part of the Head of Editorial Standards' role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards had read the relevant correspondence and 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 the appeal in relation, in particular, to the following section of the Editorial Guidelines:

Section 15 – Conflicts of Interest

15.2 Principles

15.2.1

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.

15.2.2

There must never be any suggestion that commercial, financial or other interests have influenced BBC editorial judgements. Those involved in the production of BBC content must have no significant connection with products, businesses or other organisations featured in that content.

15.2.3

The BBC must be satisfied that individuals involved in the production of its content are free from inappropriate outside commitments and connections.

The Head of Editorial Standards' view was that the BBC Executive had set out its reasoning and decision clearly, and that the Trustees were likely to conclude that there was not a conflict of interest in this case and it could not therefore be argued that the external activities of an individual had brought the BBC into disrepute.

She appreciated that there would be some viewers, commentators and members of particular groups who would have strong views about the Russian Government and Mr Putin's role. However, the central question here was, specifically, about whether Angus Roxburgh's position was compromised by a previous assignment for a public relations agency in a way that contravened the guidelines.

The Head of Editorial Standards noted that the guidelines on Conflicts of Interest were principally designed to cover circumstances where, for example, someone involved in the making of a programme sought to advance a particular product or service in which that individual had a current financial, personal or political interest. She noted that Mr Roxburgh's PR work was not ongoing, having come to an end before he became an adviser to the series, and there was no evidence that he had any continuing financial or other interest in promoting a particular line.

The Head of Editorial Standards considered that Trustees would agree that a professional assignment of this nature, carried out in the past and about which he has been perfectly open, would not, of itself, constitute a breach of the Editorial Guidelines.

The Head of Editorial Standards was also of the view that the ESC would be likely to find that Mr Roxburgh did not have what could reasonably be viewed as editorial control. Such control would almost certainly have involved input at the editing stage which, as had been explained to the complainant, he did not have. As a consultant to the series his role was to share his extensive knowledge and to help gain access to senior Kremlin figures.

The Head of Editorial Standards said that the BBC Trust entirely agreed with the complainant's views about the importance of the Editorial Guidelines. All journalists, as well as others involved in every aspect of BBC content, were bound by the guidelines, which were recognised internationally as embodying the highest standards. The work of the ESC was very largely concerned with helping to ensure that those standards were upheld across the BBC's output. Overall, however, the Head of Editorial Standards was clear that the complainant had not raised a matter of substance in terms of a breach of the Editorial Guidelines and that the appeal did not have a reasonable prospect of success.

Finally, the Head of Editorial Standards noted the delays which the complainant had experienced at the various stages of his complaint and she apologised for this on the Trustees' behalf.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. He repeated that Mr Roxburgh's appointment breached the Editorial Guidelines on Conflicts of Interest and made the following points:

- The guidelines did not specify that the interest had to be current and the Russian government would fall under the heading "other organisations".

- There was no evidence of Mr Roxburgh breaking any stories damaging to the Kremlin since he had taken on his PR role with them.
- There was no suggestion in the guidelines that such a significant connection with the organisation featured in the programme was acceptable simply because it was in the past and had been perfectly open.
- The Head of Editorial Standards had confused “editorial control” with “editorial judgements”. The guidelines talked about the latter. Editorial judgements drove all content related decisions by any member of an external production team. As a former journalist, the complainant knew what trading access for impartiality meant. He also pointed out that the BBC had provided no evidence of Mr Roxburgh’s precise responsibilities. He had requested a copy of Mr Roxburgh’s job description but this had been refused.
- Given the BBC Trust’s supposed independence from the Executive, it was strange that the Trust should take the Executive’s reasoning and decision at face value without conducting due diligence. The Trust had a statutory and moral obligation to carry out a full investigation. By refusing to do so, the Trust was bringing the BBC’s alleged impartiality into further disrepute.

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 noted the complainant’s view that Mr Roxburgh’s former position constituted a conflict of interest with regard to his role as consultant to the series *Putin, Russia and the West*. The Committee agreed with the Head of Editorial Standards that a professional assignment of this nature, carried out in the past and about which he has been perfectly open, would not, of itself, constitute a breach of the Editorial Guidelines. The Committee also agreed that Mr Roxburgh did not have what could reasonably be viewed as editorial control in the sense that, as a consultant, he was not likely to be responsible for making judgements about the editorial content of the programme. As a consultant to the series his role was to share his extensive knowledge and to help gain access to senior Kremlin figures.

The Committee noted the complainant’s comments that the Conflicts of Interest Guidelines did not state that the interest had to be current or that a connection was acceptable if it was in the past and had been open. However, the Committee was satisfied that in his position as consultant Mr Roxburgh would not have been making the kind of editorial judgments which could give rise to a conflict of interest. The Committee agreed that there was no reasonable prospect of success for the complaint that the Conflicts of Interest Guidelines had been breached by the use of Mr Roxburgh as a consultant to this series.

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

BBC News at Ten, BBC One, 11 May 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.

Appeal to BBC Trust

The complainant wrote to the Trust saying that a video report on Palestinian hunger strikes broadcast on the *BBC News at Ten* included false assertions made by two contributors, an Israeli Government spokesman and an Israeli farmer. The complainant said that comments were presented as if they were statements of fact, although they were no more than the personal opinions of the contributors. The complainant said that the contributors should have been challenged on their statements.

The complainant also said that he had made similar points previously and had been disregarded. He referred to various publications, including two books, *Bad News from Israel* and *More Bad News from Israel*, which he felt showed that the majority of people who depended on the BBC for their knowledge of current affairs had many misconceptions about the situation in the Middle East. He argued that this provided evidence that the BBC systematically misled viewers in this respect. In his view, the failure to contradict disputed assertions or clearly present them as opinions rather than facts was the most likely source of the misconceptions.

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 the appeal in relation to the Editorial Guidelines on Accuracy and Impartiality. She noted that the Complaints Director of the BBC's Editorial Complaints Unit had provided an explanation of due accuracy in relation to the report, pointing out that the introduction to the report and the report itself adequately reflected the reason why the hunger strikes began. She noted that the introduction included the following:

"Thousands of Palestinians took to the streets in Gaza, the West Bank and Jerusalem today in solidarity with prisoners on hunger strike in Israeli jails. What began 74 days ago with two men protesting against their detention without trial has now spiralled into over one and a half thousand prisoners on hunger strike. It's a new political tactic adopted by the Palestinians as the peace process continues to fail."

The Head of Editorial Standards noted that the reporter made the point that some prisoners had been detained without trial, while others had been convicted of crimes against civilians. The Israeli Government spokesman, Mark Regev, was clearly identified and summarised the government's position:

"It's difficult when you deal with someone who wants to commit suicide. It's a problem with suicide bombers, who are prepared to blow themselves up when

they want to kill innocent people, and in this tactic if they think, for their Islamist cause, that they want to kill themselves, it is a challenge.”

The Head of Editorial Standards believed it was clear both from the introduction and from the commentary by the reporter that some prisoners had been detained without trial and that the hunger strike began over this issue. Mr Regev’s view was a statement of the Israeli Government’s position and would have been heard in this context. It was not presented as fact and was clearly expressed by a spokesperson whose position was identified.

The Head of Editorial Standards noted that the reporter said that the Palestinians had not seen any benefit from the Arab Spring and that the hunger strikes were a new tactic. Another tactic, he said, was to urge an international boycott of food produced in disputed land, and at that point, the report showed footage of a farm that was sited in land which the reporter said had been captured from Jordan by Israel in the 1967 war. The reporter also said that, under international law, the territory was an illegal settlement and acknowledged that Israel disputed that the settlement was illegal. He reported that the trade boycott had had a degree of success, and the Co-op had expanded its measures against such produce. He said: “the farmers feel the impact of it, but say it won’t force them out”, before the comment from Yaakov Elbaz was heard. The Head of Editorial Standards noted that, again, Mr Elbaz, was clearly identified as an Israeli farmer and he gave the following comment:

“We learn to live with it and it will just make us go and sell it in other places that don’t have any trouble with me being Jewish and Israeli.”

The Head of Editorial Standards said that viewers would have had a number of signposts in the commentary which would have made the reasons for the boycott clear. The farmer was identified and the fact that this was his view would have been clear to viewers.

In summary the Head of Editorial Standards considered that these explanations provided sufficient context and background for the audience to be able to judge the comments made by individual contributors and that a challenge was not necessary to achieve due accuracy or impartiality. She did not believe this was misleading and therefore the appeal on these grounds had no reasonable chance of success.

The Head of Editorial Standards also addressed the other aspect of the appeal about reporting, more generally, in the Middle East. The complainant referred specifically to two books published by the Glasgow Media School, *Bad News from Israel* and *More Bad News from Israel*. The Head of Editorial Standards said that the BBC’s coverage of the Middle East was subject to the Editorial Guidelines. Any audience member who believed that a specific broadcast or publication had broken these guidelines was free to contact the BBC and lodge a complaint. The Editorial Standards Committee frequently considered complaints on Middle East coverage from opposing perspectives but had upheld relatively few. It had been the Trustees’ judgement that, on the evidence before the Committee, opinions and facts were generally distinguished in accordance with the guidelines. The Head of Editorial Standards did not consider that the complainant’s assumption that the BBC had misled audiences by not clearly labelling opinion or challenging opinions was borne out by the record of judgements made by Trustees on these issues. She considered that there was no reasonable prospect of success for this element 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 disagreed with the Head of Editorial Standards’ finding, saying that a statement made in a programme without contradiction or direct qualification would be considered by viewers to be factual and that

the opinion of the ESC was not sufficient grounds upon which to reject empirical evidence of misleading reporting.

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 noted that the complainant had raised issues with the content of the *BBC News at Ten* report in question and also more generally with regard to the BBC's coverage of the Middle East.

The Committee noted the complainant's argument that contradiction or qualification of the comments made by Mr Regev and Mr Elbaz was necessary to achieve balance. The Committee agreed that it was clear both from the introduction and from the reporter's commentary that some prisoners had been detained without trial and that the hunger strike began over this issue. The Committee also agreed that Mr Regev's view was a statement of the Israeli Government's position and was not presented as fact. Similarly, the Committee agreed that the comments from the Israeli farmer were not presented as fact but rather opinion and this would have been clear to viewers. The reasons for the boycott were given in the programme. The Committee agreed that in both instances the commentary provided the qualification that the complainant felt was not there.

The Committee agreed that there was no reasonable prospect of success for an appeal on the grounds that this report had breached either the Accuracy or the Impartiality Guidelines.

The Committee noted that the complainant had also made a more general complaint about the BBC's Middle East coverage. The Committee agreed that it has considered many complaints about coverage of the Middle East from different perspectives and very few had been upheld. The Committee agreed that the complainant's assumption that the BBC systematically misled audiences by not clearly labelling opinion or challenging opinions was not borne out by the record of judgements made by Trustees on these issues. The Committee agreed that there was no reasonable prospect of success for this element of the appeal.

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