

Editorial Standards Findings

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

April and May 2013 issued June 2013

A sentence on page 51 of this document was amended on 24 July 2013. A footnote has been added to that page detailing the change.

Remit of the Editorial Standards Committee	1
Summaries of findings	3
Appeal Findings	6
References to Skype in BBC news and factual output	6
<i>Woman's Hour</i> , BBC Radio 4, 18 December 2012	13
Coverage of Rangers Football Club, BBC Online	25
Rejected Appeals	36
<i>The Grammar School: A Secret History</i> (Parts 1 and 2) – 5 and 12 January 2012 – BBC Four	36
<i>Tony Livesey</i> (Presented by Colin Paterson), BBC Radio 5live, 7 June 2012	48
Twitter Q&A with Jeremy Bowen	53
ECU decision not to reply to an out of time complaint	57
<i>Panorama: Price Tag Wars</i> , BBC One, 17 September 2012	62
"Gaza rocket arsenal problem for Israel", BBC News	69
BBC Breakfast, BBC One, 1 November 2012	75
BBC science programmes	80
BBC News	83
BBC News	86
Decision to cease correspondence at Stage 1	89
Decision to cease correspondence at Stage 1	92
Six O'Clock News, BBC Radio 4, 15 October 2012	94
Conspiracy Road Trip: 7/7 Bombings, BBC Three, 1 October 2012	99
Today, BBC Radio 4, 17 October 2012	108
BBC Scotland decision to drop an investigation	111

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), David Liddiment, Richard Ayre, Sonita Alleyne and Bill Matthews. 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

Summaries of findings

References to Skype in BBC news and factual output

This complaint concerned on-air references to "Skype" in BBC news and factual output in general, mentioning its use in the *Today* programme and *Sunday Morning Live* in particular. The complainant said that, unless in stories concerning Skype as a company, its industry or technology, references to "Skype" were not justified in BBC news programmes. The complainant said that such references gave the brand undue prominence and were in breach of the Editorial Guidelines.

The Committee concluded:

- that the use of the word "Skype" as a metonym for "internet call" was not inherently inaccurate.
- that, in this case, there was no evidence that the BBC had used the word to refer to any internet call made using another provider and, in all instances of which the Committee was aware, the BBC's use of the term "Skype" had been duly accurate.
- that, references to "Skype" were clearly editorially justified whenever Skype was relevant to a news story, whether it was the subject of the story or not, and that the question of relevance should be broadly interpreted.
- that appropriately limited references to "Skype" within a programme for the purpose of informing members of the public how to contact the BBC were clearly editorially justified and did not amount to promotion or endorsement.
- that there was no clear editorial justification for on-air references to "Skype" in relation to "down-the-line" interviews.
- that, as no specific examples of such references to Skype had been cited by the complainant, the subject was hypothetical and no breach of the Guidelines could be recorded.
- that, notwithstanding the above, the Committee wished to record that, whatever the operational rationale for using Skype to conduct "down-the-line" interviews, this did not of itself amount to editorial justification for an on-air reference to "Skype".
- that, in the absence of any specific citations of the number or frequency of on-air references to Skype in the *Today* programme, the Trust Unit had not considered it proportionate or cost-effective to conduct a speculative investigation.
- that, with regard to the two editions of *Sunday Morning Live* cited by the complainant, the number or frequency of on-air references to Skype had not rendered such references unduly prominent and had not given the impression that the BBC was promoting or endorsing Skype, its products or services.
- that, notwithstanding the above, programme makers should be alert to the risks inherent in making on-air references to specific brands and products, and the Executive should report back to the Trust on actions it will take to ensure compliance with the guidelines on Editorial Integrity and Independence from

External Interests as the BBC makes increasing use of internet telephony.

- that, while the Committee had already decided that any commercial or operational reasons for choosing to use Skype to facilitate BBC output did not amount per se to the editorial justification that would allow an on-air reference, it did not have any specific examples of such use before it and it therefore had no basis on which to find that there had been a breach of the Product Prominence guidelines in this regard.

The complaint was not upheld.

For the finding in full see pages 6 to 12.

Woman's Hour, BBC Radio 4, 18 December 2012

This is a first party complaint from Mr Steve Moxon about a Woman's Hour interview regarding a Business, Innovation and Skills Select Committee Inquiry. The complainant did not take part in the interview but his evidence to the Inquiry was discussed. The complainant said that the programme makers deliberately misrepresented him and his evidence, and that the interview was not impartial and the interviewee also misrepresented his evidence. The complainant also said that Woman's Hour had, over many years, dismissed science research on men/women. The complainant also raised issues with the handling of his complaint.

The Committee concluded:

- that the interviewer's description of the complainant's evidence was duly accurate and there had been no breach of the Impartiality or Fairness guidelines in this regard.
- that the interviewer's description of him as "a man who describes himself as an academic" was not duly accurate and also breached of the guidelines on Fairness, but there was no evidence of bias.
- that the example of the complainant's work cited by the interviewee was duly accurate.
- that due impartiality had been achieved in the interview and there was no evidence to suggest that the guidelines on Fairness had been breached.
- that there was no evidence of a breach of the Impartiality guidelines in respect of the general complaint about the programme's coverage of science research on men/women.
- that it would have been unrealistic and disproportionate to require the issues which the complainant raised to have been dealt with while the programme was on air, and there had been no breach of the Accuracy guidelines in this respect.
- that the complaint had been handled in line with the editorial complaints procedure and there had been no breach of the Accountability guidelines.

The complaint was partially upheld on one point with regard to Accuracy and Fairness, and not upheld with regard to the remaining four points.

For the finding in full see pages 13 to 24.

Coverage of Rangers Football Club, BBC Online

This is a consolidated appeal from two complainants who said that a number of reports on the BBC's website were inaccurate in giving the impression that Rangers Football Club, rather than the company which had previously owned the club, had gone into administration/liquidation. One complainant also asked the Committee to review the Trust Unit's decision not to accept on appeal elements of his complaint relating to an allegation of institutional bias.

The Committee concluded:

- that the elements of the complaint relating to alleged institutional bias did not qualify for consideration on appeal.
- that the choice of the right language by the BBC was highly dependent on the purpose and context of the output, including the intended audience and, for example, whether it was a sport story or a business story.
- that, while there was no reason to treat the football club itself as "new" simply because the assets that make up the club had been transferred from one company to another, there was good reason to distinguish between "newco" and "oldco" when referring to the owning companies and the corporate transactions involved in the sale of the club.
- that the BBC had not used clear, precise language and due accuracy had not been achieved where the distinction between an "old" and "new" Rangers had been made in output referring to, and related to, football and the club as opposed to the "old" and "new" company.
- that it was likely to be the complex nature of this particular story that had led to the lack of due accuracy and there were no grounds on which to uphold the complaint of bias.

The complaint was upheld in part.

For the finding in full see pages 25 to 35.

Appeal Findings

References to Skype in BBC news and factual output

1. Background

This complaint concerned on-air references to 'Skype' in BBC news and factual output in general, mentioning its use in the *Today* programme and *Sunday Morning Live* in particular.

Today is Radio 4's flagship news and current affairs programme. *Sunday Morning Live* is a live discussion programme on BBC One, in which studio guests and members of the public debate topical issues. Non-studio contributions are made via social media (using Facebook and Twitter), webcam (using Skype) and telephone. The programme also conducts a weekly poll, in which votes are cast by SMS text message.

2. The complaint

Stage 1

The complainant first contacted BBC Audience Services on 8 June 2012. He complained that, frequently, *Today* programme presenters and BBC television and radio newsreaders refer to interviews being conducted "via Skype". The complainant argued that, even if a brand name were a metonym⁴ for a product, the BBC should not use it, citing *Blue Peter's* practice of referring to Sellotape as "sticky-tape". In this instance, alternative terms such as "Internet call" or "VoIP call" were both correct and understandable. In the complainant's view, non-commercialism was a key tenet of BBC impartiality, and it was unfair for the BBC to promote a company's service above its competitors'. In later correspondence he said that Skype had been repeatedly mentioned on BBC One's discussion programme *Sunday Morning Live*.

BBC Audience Services responses stated that advertising and product placement were forbidden under the BBC Charter; that, as technology had advanced, the BBC had striven to enable contributions to its programmes to be made more easily; that the BBC had an obligation to reflect its audience's interests and to embrace new technologies which made the BBC more accessible; that the BBC had decided that it was reasonable to verbally acknowledge the use of this technology when interviews were carried out via Skype; and that the BBC was not breaching its Editorial Guidelines

On 20 July the complainant was offered escalation to stage 2.

Stage 2

The complainant wrote to the Director, BBC News, on 23 July 2012. After setting out his complaint, he explained that "minor transgressions" such as this represented an erosion of the BBC's impartiality, which was essential to its value and integrity as a public service broadcaster.

⁴ A word, name, or expression used as a substitute for something else with which it is closely associated. For example, 'Washington' is a metonym for the US government. See: <http://oxforddictionaries.com/definition/english/metonym?q=metonym> .

The complainant argued that the prominence given to Skype led audiences to believe that 'Skype' was the name of the technology rather than a brand, and had resulted in the promotion of Skype's commercial interests to the detriment of its competitors.

Anticipating the argument that the BBC was reflecting current usage, the complainant said that the mere fact that a mistake was commonplace did not justify its repetition. Nor, according to the complainant, did the increasingly commercial nature of society justify setting aside BBC standards.

The Head of Editorial Compliance & Accountability, BBC News, responded on 20 August 2012. In her view Editorial Guideline 14.4.4 recognised that there would be occasions when it was appropriate to mention commercial products and set out how to do so without giving them undue prominence. She explained that, if the BBC wished to use internet technology for video calls, it used commercial services such as Skype. The terms it had negotiated with Skype (which are confidential) broadly require the BBC to give a credit when it uses Skype, appropriately limited so as to avoid undue prominence. She explained that one editorial justification for referring to Skype, or any other provider, is that the BBC would not otherwise have the relevant piece of content. Thus, when the BBC uses Skype, it gives Skype a single credit.

Having reviewed previous editions of the *Today* programme and other news output, the Head of Editorial Compliance & Accountability stated that she could find no evidence to support the complainant's allegations of repeated or gratuitous references to Skype.

The Head of Editorial Compliance & Accountability cited three online news stories⁵ (including one concerning dissident Chinese artist Ai Weiwei) where she was satisfied that reference to Skype was editorially justified. Responding on behalf of the Producer of *Sunday Morning Live*, the Head of Editorial Compliance & Accountability stated that, before using Skype, the programme had used an unbranded product. Market analysis had found that Skype was superior in several technical areas and "won hands down" for its ease in getting the public on-air, because its user base was massive and installation was free and quick. As *Sunday Morning Live* relied on members of the public dialling in at short notice, Skype was ideal. In addition, the use of any video call system for live broadcast required that incoming calls could be moderated, and the only available moderation systems were for Skype.

The Head of Editorial Compliance & Accountability concluded by noting that the BBC did use generic terms such as 'internet call' or 'video call' when appropriate, but that it would also give a single credit to Skype when it was clearly editorially justified.

The complainant responded on 21 August 2012. He argued that, apart from news stories of which Skype was itself the subject, there were no circumstances in which 'Skype' could not be replaced with a generic term, and that doing so would neither alter a story's editorial content nor confuse audiences. In the complainant's view, any reference to Skype that was not editorially justified was gratuitous—not merely where the term was

⁵ Syria crisis: your experience <http://www.bbc.co.uk/news/world-middle-east-17765750> ; Ai Weiwei's hopes to visit London: <http://www.bbc.co.uk/news/world-18293746> ; Schoolboy app developer on ICT classes <http://www.bbc.co.uk/news/education-16518885> .

used repeatedly. The complainant quoted from the September 2011 Ofcom decision relating to Sky News's use of Skype ("the Ofcom Decision")⁶, where it was stated:

Ofcom reminds broadcasters that references to material broadcast 'via webcam' or 'via video link', for example, are unlikely to raise issues under Rule 9.5 of the [Ofcom Broadcasting] Code, but any visual and/or oral brand reference should be both editorially justified and brief.

The complainant argued that the BBC has an obligation under the Skype Agreement to mention the brand name once, each time the service was used and that, on this basis, the BBC's justification in mentioning Skype is commercial rather than editorial.

The complainant argued that the requirements of Skype's Broadcast Terms of Service did not justify breaking the Ofcom Code or the BBC's Editorial Guidelines. In the complainant's view, references to Skype would not be editorially justified where Skype was merely the conduit for part of the story and had no bearing on its content. In the complainant's view, the use of the term 'Skype' would be editorially justified only if a news story pertained to Skype.

The complainant could not think of any instance in which any of the essential information of a news story would be lost by using a generic name for the technology. Referring to one of the BBC Online news stories that the Head of Editorial Compliance & Accountability had cited, the complainant argued that, while Ai Weiwei's mode of communication (which included the use of Skype) was clearly relevant to the story, nothing would have been lost by using a generic term to refer to the technology he had used.

The BBC had two imperatives to use a generic term instead of 'Skype': (i) to avoid undue product prominence; and (ii) to educate audiences that 'Skype' and 'VoIP/webcam/internet call' were not synonymous.

Noting that *Sunday Morning Live* was not the focus of this complaint, the complainant argued that the programme's need to use, or the programme makers' well-justified functional preference for, a particular service provider did not editorially justify references to the provider's brand name. In the complainant's view, the fact that it might be practically impossible to broadcast output such as *Sunday Morning Live* without regulatory breach did not justify breaking the rules on product prominence, but rather raised the question of whether such output should be broadcast at all.

In this instance, the choice of product or service was not an editorial but an operational consideration. Furthermore, in order to pursue the format of *Sunday Morning Live*, there were other options, including operating the debate as a phone-in.

The Head of Editorial Compliance & Accountability responded on 22 August 2012 referring the complainant to the Trust.

Stage 3 – Appeal to the Editorial Standards Committee

The complainant appealed to the Trust on 31 August 2012. He summarised his complaint as follows:

⁶ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf>

- The use of the term 'Skype' was not justified in BBC news programmes, as this gave the brand undue prominence.
- This practice contravened the Ofcom Broadcasting Code and the Editorial Guidelines.
- There was, however, editorial justification for using the term in news stories concerning Skype as a company, its industry or its technology.
- Apart from such stories, there were no circumstances in which 'Skype' could not be replaced with some other generic term such as 'video call' or 'internet call'.
- The use of a generic term would neither alter the editorial content of any given news story nor lead to audience confusion.
- Use of the Skype brand name contravened Ofcom guidance, as reflected in the Editorial Guidelines.
- The only exception to the prohibition of the use of brand names provided for in the Editorial Guideline 14.4.4 was editorial justification.

3. Applicable Editorial Guidelines

This appeal raised potential breaches of the Editorial Guidelines on Accuracy (Section 3) and Editorial Integrity and Independence from External Interests (Section 14). The full guidelines are at: www.bbc.co.uk/editorialguidelines.

4. The Committee's decision

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

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

As a preliminary point, the Committee noted that Ofcom does not have jurisdiction over complaints against the BBC concerning accuracy⁷ or commercial references in television programming (except product placement).⁸ Therefore, whilst noting the content of the Ofcom Decision brought to its attention by the complainant,⁹ the Committee also noted that it was not bound by that decision.

As a further preliminary point, the Committee noted that its remit is to consider appeals against the BBC's Editorial Guidelines. The Committee did not consider it appropriate to consider this appeal against BBC Vision's Credit Guidelines.

⁷ Ofcom Broadcasting code, Section Five. See: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

⁸ Ofcom Broadcasting code, Section Nine. See: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references-television/>

⁹ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf> .

The Committee first considered whether there had been a breach of the Editorial Guidelines on Accuracy. Noting that (as guideline 14.4.4 acknowledged) the BBC needed to be able to reflect the real world, the Committee took the view that, in the real world, people generally (though not inevitably) use the term 'Skyping' when referring to the use of internet call services in general. The Committee noted that the use by the BBC of metonyms (eg, 'Westminster' for the UK Parliament) was not in principle inaccurate, and in its view audiences were well able to recognise such use. The Committee therefore took the view that the use of 'Skype' as a metonym for 'internet call' was not inherently inaccurate.

The Committee noted that, in this case, the use of 'Skype' as a metonym did not arise, as there was no evidence that the BBC had used the term 'Skype' to refer to any internet call made using another provider. It therefore appeared to the Committee that, in all instances of which it was aware, the BBC's use of the term 'Skype' had been duly accurate. The Committee therefore concluded that there had been no breach of the Accuracy guidelines.

The Committee then considered whether there had been a breach of the guidelines on Editorial Integrity and Independence from External Interests, with particular reference to product prominence.

The Committee noted that guideline 14.4.4 acknowledges that the BBC's need to reflect the real world will involve referring to commercial products, organisations and services in its output. The Committee also noted that this is qualified by the requirement that the BBC must avoid any undue prominence which gives the impression that it is promoting or endorsing products, organisations or services.

The Committee noted that guideline 14.4.4 states that, to achieve this, the BBC must ensure that references to trade names, brand names and slogans are clearly editorially justified. In considering whether there was clear editorial justification for on-air references to Skype, the Committee noted that, according to guideline 2.4, editorial justification is a judgement on the particular circumstances of each case, balancing the editorial purposes of the BBC's output or actions with their impact on audiences and people in its output (or, where relevant, those closest to them).

The Committee noted that the complainant had acknowledged that, when Skype, its industry or technology was the subject of a news item, references to Skype were editorially justified. While agreeing with this proposition, so far as it went, the Committee felt that such an approach was unduly restrictive. In the Committee's view, references to Skype were clearly editorially justified whenever Skype was relevant to a news story, whether it was the subject of the story or not. For example, in the BBC Online article about Chinese dissident Ai Weiwei,¹⁰ the Committee considered that Ai Weiwei's use of Skype was relevant to the story, because Skype's widespread use around the world allowed him to communicate with users in the West in a way that Chinese video call providers such as Baidu did not. Given the respective roles of the Executive and Trust, the Committee took the view that the question of relevance should be broadly interpreted, in order to ensure that the Trust did not usurp the Executive's editorial discretion.

¹⁰ Ai Weiwei's hopes to visit London: <http://www.bbc.co.uk/news/world-18293746>.

So far as the BBC's use of Skype was concerned, the Committee noted that there were two ways in which Skype's video call technology facilitated the production of BBC output. The first use was to allow members of the public, both in the UK and around the world, to 'dial in' to programmes such as *Sunday Morning Live* and to make audio-visual contributions.

The Committee noted that, according to the Head of Editorial Compliance & Accountability: *Sunday Morning Live* had previously used an unbranded product that was expensive, unreliable and of very poor quality; Skype was superior to its competitors in several technical areas and "won hands down" for its ease of getting the public on-air; and Skype offered the only available moderation systems for live calls. The Committee also noted the complainant's counter-argument that these were all operational considerations, not editorial ones.

In the Committee's view, it was appropriate for the BBC to solicit the broadest possible audience participation by using social media such as Twitter and Facebook and video call technology such as Skype. In order to facilitate audience participation by these means, it was necessary for the BBC to inform the public of its contact details (in this particular instance, its 'Skype ID'). The Committee concluded that appropriately limited references to 'Skype' within a programme for the purpose of informing members of the public how to contact the BBC were clearly editorially justified and did not amount to promotion or endorsement.

The Committee noted that the second use of Skype video call technology in the production of BBC output was to conduct 'down-the-line' interviews with correspondents or contributors in circumstances where it was not practicable for the BBC to provide its own audio-visual link.

The Committee noted that, according to the Head of Editorial Compliance & Accountability, the BBC could no longer develop technology exclusively for its own use, and therefore had to use commercial services such as Skype. The Committee also noted the complainant's counter-argument that this was an operational consideration, not an editorial one.

In respect of the use of Skype to conduct 'down-the-line' interviews, the Committee took the view that the fact that Skype was providing the BBC with video call technology was of no greater editorial relevance than the fact that a different telecommunications company was providing the BBC with telephone services. In respect of this use, the Committee could find no editorial justification for referring to 'Skype' rather than using a corresponding generic term. In the Committee's view, if programme makers wished to draw audiences' attention to variations in sound and/or picture quality, this could be achieved just as effectively by stating that the 'down-the-line' interview was being conducted via 'internet call', 'webcam', 'video link', or by using similar expressions.

The Committee concluded that there was no clear editorial justification for on-air references to 'Skype' in relation to 'down-the-line' interviews. The Committee noted that no specific examples of such references to Skype had been cited by the complainant in the two programmes under consideration. In the absence of any examples the Committee was not in a position to record a breach. The subject was hypothetical. The Committee

wished to record, however, that whatever the operational rationale for using Skype to conduct “down-the-line” interviews, this did not of itself amount to editorial justification for an on-air reference to Skype.

The Committee then considered whether the number or frequency of on-air references to Skype had rendered such references unduly prominent, giving the impression that the BBC was promoting or endorsing Skype, its products or services. The Committee noted that guideline 14.4.4 provides that programme makers should use verbal references sparingly unless there are very strong editorial reasons for repeated references to a brand.

The Committee noted that the complainant had adduced no evidence of the number or frequency of on-air references to Skype in the *Today* programme, and that, in the absence of any specific citations, the Trust Unit had not considered it proportionate or cost-effective to conduct a speculative investigation.

The Committee noted that the only evidence concerned *Sunday Morning Live*, which the complainant stated was not the main focus of this complaint. The Committee noted that in the 10 June 2012 edition of *Sunday Morning Live* the presenter had made two oral references to Skype and three oral references to generic video-call technology, and that in the 17 June 2012 edition the presenter had made one oral reference to Skype and seven oral references to generic video-call technology. The Committee also noted that oral references to Skype were spread throughout the editions in question, not clustered together.

On balance, the Committee felt persuaded that programme makers had used verbal references to Skype sparingly. The Committee therefore concluded that the number or frequency of on-air references to Skype had not rendered such references unduly prominent and had not given the impression that the BBC was promoting or endorsing Skype, its products or services. However, the Committee was concerned that programme makers should be alert the risks inherent in making on-air references to specific brands and products, and it requested that the Executive report back to the Trust on actions it will take to ensure compliance with the guidelines on Editorial Integrity and Independence from External Interests as the BBC makes increasing use of internet telephony.

The Committee then considered whether the BBC had accepted a free product in return for on-air or online credits. The Committee agreed that this section of the Guidelines prohibited a blanket arrangement to provide an on-air reference to Skype where there was no other justification for doing so. The Committee had already decided that any commercial or operational reasons for choosing to use Skype to facilitate BBC output did not amount per se to the editorial justification that would allow an on-air reference. The Committee was mindful, however, that it did not have any specific examples of such use before it and it therefore had no basis on which to find that there had been a breach of guideline 14.4.4 in this regard.

The Committee agreed that it would ask the Executive to report to the Committee on the crediting of services such as Skype in the light of this finding.

Finding: Not Upheld

Woman's Hour, BBC Radio 4, 18 December 2012

Summary of finding

This is a first party complaint from Mr Steve Moxon about a Woman's Hour interview regarding a Business, Innovation and Skills Select Committee Inquiry. The complainant did not take part in the interview but his evidence to the Inquiry was discussed. The complainant said that the programme makers deliberately misrepresented him and his evidence, and that the interview was not impartial and the interviewee also misrepresented his evidence. The complainant also said that Woman's Hour had, over many years, dismissed science research on men/women. The complainant also raised issues with the handling of his complaint.

The Committee concluded:

- that the interviewer's description of the complainant's evidence was duly accurate and there had been no breach of the Impartiality or Fairness guidelines in this regard.
- that the interviewer's description of him as "a man who describes himself as an academic" was not duly accurate and also breached of the guidelines on Fairness, but there was no evidence of bias.
- that the example of the complainant's work cited by the interviewee was duly accurate.
- that due impartiality had been achieved in the interview and there was no evidence to suggest that the guidelines on Fairness had been breached.
- that there was no evidence of a breach of the Impartiality guidelines in respect of the general complaint about the programme's coverage of science research on men/women.
- that it would have been unrealistic and disproportionate to require the issues which the complainant raised to have been dealt with while the programme was on air, and there had been no breach of the Accuracy guidelines in this respect.
- that the complaint had been handled in line with the editorial complaints procedure and there had been no breach of the Accountability guidelines.

The complaint was partially upheld on one point with regard to Accuracy and Fairness, and not upheld with regard to the remaining four points.

1. Background

On 18 December 2012, *Woman's Hour* on BBC Radio 4 reported on the work of a Business, Innovation and Skills Select Committee Inquiry entitled *Women in the Workplace*.

The remit of the Inquiry included examining why there were not more women on company boards and the effectiveness of current measures to tackle gender inequality. The complainant was one of those who had provided evidence, written and oral, to the Select Committee on this topic.

The *Woman's Hour* presenter, Jane Garvey, interviewed Ann McKechin MP, a member of the Inquiry, and they discussed the evidence given by various witnesses to the Select Committee.

The interview included the following exchange:

Jane Garvey: But why though, for example, consider evidence from a man who describes himself as an academic – Steve Moxon. He's made some pretty controversial comments about women relatively recently, and indeed he told you that he didn't think that women were capable of being bosses.

Ann McKechin: Well Mr Moxon has some very interesting views, including thinking, saying that the basic male/female working relationship was based on sexual attraction. It's not one that I certainly, I would adhere to, but we wanted to hear different views...

2. The complaint

This is a first-party complaint from Mr Moxon. The complainant said that he did not describe himself as an academic but as an independent cross-disciplinary researcher/writer on the biological roots of human sociality with a particular interest in the sexes. He also said that his submissions to the Inquiry had been deliberately misrepresented by the presenter. He said that his submissions had addressed why women constituted only a small proportion of those "at the top" and he had not argued that women were incapable of being bosses. The complainant said that the interviewee had also misrepresented his evidence and that the interview with her had not been set up in an impartial way. The complainant also complained about the manner in which his complaint had been dealt with. He further alleged that *Woman's Hour* had over many years displayed unfairness to men and had dismissed scientific research on men and women.

Initial complaint

On the day of the broadcast, 18 December 2012, the complainant wrote to *Woman's Hour* detailing his concerns and asking for an on-air apology, failing which he said he would make a formal complaint. The Executive Producer responded the same day, saying she did not think the complainant had been misrepresented, though she apologised if the complainant felt that the description of his status was wrong. A further exchange between the complainant and the Executive Producer followed, also on the same day, at the end of which the Executive Producer referred the complainant to the formal complaints process.

Stage 1

The complainant contacted BBC Audience Services on 31 December 2012 to complain formally of bias and inaccuracy in the *Woman's Hour* programme. The Executive Producer responded on 10 January 2013, reiterating that she was sorry if the complainant felt that he had been seriously misrepresented, that it had not been their intention, and that she did not consider the complainant had, in fact, been misrepresented. She also apologised for not using the complainant's phraseology "independent cross-disciplinary researcher/writer". The Executive Producer also provided details of how to escalate the complaint.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 20 January 2013. He said his complaint concerned "gross intentional malicious misrepresentation, amounting to clear defamation". He said the central point of his complaint was the serious misrepresentation of his submissions to the Inquiry and that the matter of how his status had been described was a subsidiary matter. He said that the Executive Producer had failed to address his main complaint regarding the misrepresentation of his evidence, and he wanted the ECU to consider both this complaint and his complaint about the description of his status. The complainant also pointed to "wider issues" concerning the BBC and *Woman's Hour*; he said that they lacked scientific integrity and that the programme lacked any sense of fairness to men. The ECU issued its provisional finding on 12 February 2013. It did not uphold the complaint. The complainant responded the same day, indicating that he disagreed with the provisional findings and asking for confirmation about how to take the complaint further. On 13 February 2013, the ECU confirmed its provisional finding and offered escalation to the Trust.

Appeal to the Trust

The complainant wrote to the BBC Trust on 21 February 2013. The complainant raised the following points relating to the Editorial Guidelines on accuracy, impartiality, and fairness, contributors and consent. He alleged:

- Point (A) That the *Woman's Hour* team deliberately misrepresented his evidence to a Commons Select Committee Inquiry when Jane Garvey, the presenter, said "...he [the complainant] didn't think women were capable of being bosses."
- Point (B) That Jane Garvey, the presenter, deliberately misrepresented the complainant when she said he was "a man who describes himself as an academic".
- Point (C) That an interview with Ann McKechin, MP, had not been set up in an impartial way, and that Ms McKechin had misrepresented the complainant's evidence, and this was not corrected by the interviewer, Ms Garvey.

The complainant raised the following point relating to impartiality:

- Point (D) That *Woman's Hour* had over many years displayed unfairness to men generically and had dismissed scientific research on men/women.

The complainant also raised the following point on the handling of his complaint which related to the section of the Editorial Guidelines on accountability:

- Point (E) That the complainant was ignored when he contacted the programme while it was on air to ask for a correction, that the Executive Producer had refused to offer a meaningful apology and, in the later stages of the complaint, she had refused to engage at all.

3. Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines relating to Accuracy, Impartiality, Fairness, Contributors and Consent, and Accountability, are applicable to this case. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>.

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 all the available evidence, including (but not limited to) the Editorial Adviser's report, and comments on the report from the complainant.

The Committee considered each of the points in turn.

Point (A) That the *Woman's Hour* team deliberately misrepresented the complainant's evidence to a Commons Select Committee Inquiry when Jane Garvey, the presenter, said "...he [the complainant] didn't think women were capable of being bosses."

The Committee noted that the Editorial Guidelines relating to Accuracy, Impartiality, and Fairness, Contributors and Consent are relevant to this aspect of the complaint.

The Committee noted that the complainant had said the following in his appeal to the Trust:

"On any reading **in whole or in part** of my published and easily accessible submission to the House of Commons (or of the transcript of my oral presentation), any unbiased and reasonable commentator would easily conclude that my argument addresses ... the very well-known issue of why women constitute only a small proportion of those 'at the top', as on company boards; not why there are **no women at all** in such positions!" [complainant's emphasis]

The Committee noted that the complainant described this as a "truly laughable 'straw man' argument", incorrectly ascribed to him by Ms Garvey. He said he had, in fact, explained in detail to the inquiry "why **most** women were never going to make it 'to the top' and those who do are **atypical**".

The Committee noted that the Executive Producer had said that by making the statement "...he didn't think women were capable of being bosses", Ms Garvey was not setting up a "straw man" but summarising the evidence he had given to the Inquiry.

The Committee noted that the complainant had said the following in his initial correspondence with the Executive Producer:

"Nothing in my submission nor my oral evidence could be accurately construed as stating or implying that women 'cannot be bosses'.

"Indeed, I stressed that climbing a career hierarchy can become an end in itself through the common natural desire to do a job well and to get better at it, and especially for women given that they score higher on measures of conscientiousness than do men.

"That the sexes have dichotomous sociality ... does not mean that women cannot be bosses with workplace organisations ... even those with the most pronounced hierarchy. It is simply and obviously the case that there is an issue re 'fitting in' ... The issue of 'fit' re the workplace means that women are far less likely to become bosses than are men."

The Committee considered whether the BBC had achieved due accuracy in summarising the complainant's evidence to the Inquiry in the following way:

"...he [the complainant] didn't think women were capable of being bosses."

The Committee did not accept that listeners would have taken this statement as suggesting that the complainant thought there were, literally, no female bosses in existence or that there were no women at all on company boards. The Committee considered that the listeners would be likely to understand from the words used that this statement was referring to the ability or suitability of women to be bosses rather than suggesting that women cannot be bosses full stop.

The Committee considered the complainant's oral and written evidence to the Inquiry:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmbis/c754-i/c75401.htm>

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmbis/writev/womeninworkplace/m22.htm>

The Committee noted that the complainant's evidence included the following:

"Males form dominance hierarchies; females form what has generally been dubbed a personal network. When you get adults in the workplace, a workplace is, if you like, a socially amorphous rendition of the male dominance hierarchy. It necessarily is a hierarchy for obvious reasons that we do not need to go into. Males fit into that very well. Females obviously do not..."

"...there is a sex dichotomy as well in ingroup psychology. Male ingroup psychology tends to readily identify with any conceptual group such as your university year group – or, indeed, your workgroup – whereas female ingroup psychology is very much tied to this personal network. It comes, by extension, out from family and friends in a chain and that cuts across the workplace. It is no surprise that women have difficulty in the workplace. Not only do they have difficulty; they do not want to be in it in first place."

"There certainly are good reasons why women can succeed in work. It is fairly well known in research that women tend to be conscientious in comparison with men. That certainly will get you a long way in work. What happens then is work and excelling in it becomes an end in itself. It is like a positive feedback loop. You get spun off your front from [sic] fundamental fiscal motivation. It becomes an end in itself, and that can propel you a long way up the career hierarchy. As I said, though, the sexual dynamics are against it. The core problem is that men have a direct motivation to gain status whereas women do not."

"Women do not reach high levels in organisations for reasons of major ramifications of the essential functional difference – indeed dichotomy (profound, non-overlapping difference) – between the sexes, that impact not only on relative competitiveness but also in terms of the social structure and dynamics distinctive according to sex.

"Not only is the nature of the workplace structure in accord with male sociality and at odds with that of the female, but competitiveness per se is inimical to how

women behave in the presence of the opposite sex: whereas men actually become more competitive as part of their displaying to women; women actually back away from being competitive because this compromises their displaying to men the attributes that confer female mate-value. Furthermore, male competitiveness allied to the male facility to focus leads to men intensifying competitiveness in areas that are favourable to them but withdrawing from other areas, resulting in a distribution of effort on any particular measure showing a pronounced polarised spread, with males disproportionately at both the top and the bottom of variation. This contrasts with women tending to crowd the median of any distribution. Consequently, even if there were in aggregate no sex difference in performance or aptitude – and not excluding in competitiveness itself – then still there would be ten times as many men than women at the top.”

“...as you approach the top tails of the sex-separate distributions, you encounter the distinction between the pronounced top tail of the male distribution versus the near non-existent female top tail. This reveals the occupants at this point to be overwhelmingly if not almost 100% male and near 0% female.”

Having noted the complainant’s evidence to the Inquiry, the Committee considered that in his evidence the complainant had, by reference to various biological, psychological and sociological factors, expressed the view that most women were not biologically suited to being bosses; that women who did succeed in climbing the corporate ladder were atypical; that women are likely to have difficulty in the workplace, and that women do not reach high levels in organisations because of the “essential functional difference” between them and men.

The Committee noted that the requirements for “due” accuracy and impartiality meant that the accuracy and 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 decision.

The Committee noted that the arguments the complainant had made in his evidence to the Inquiry were complex. However, it considered that the use of the word “capable” was appropriate and adequate in this case and it considered that the statement achieved due accuracy in the way it described the various biological, sociological and psychological factors identified by the complainant in his evidence to the Inquiry.

Having regard to the section of the Editorial Guidelines on Accuracy, the Committee therefore concluded that the statement was duly accurate, and it found no breach of the Accuracy Guideline. Having regard to the Editorial Guidelines on Impartiality and Fairness, Contributors and Consent, the Committee further concluded there was no evidence that these guidelines had been breached.

This point of appeal was not upheld.

Point (B) That Jane Garvey, the presenter, deliberately misrepresented the complainant when she said he was “a man who describes himself as an academic”.

The Committee noted that the complainant said in his initial correspondence with the Executive Producer that he did not describe himself as an “academic” but as an “independent cross-disciplinary researcher/writer on the biological roots of human sociality with a particular interest in the sexes” and that he had always made it clear that he was not attached to any university.

The Committee noted that in his appeal to the Trust the complainant had said that the "jibe" that he describes himself as an academic is a clear misrepresentation that the complainant had "no published peer-reviewed academic work". The Committee noted that the complainant had said that *Woman's Hour* knew that he did have peer-reviewed and properly published academic work.

The Committee did not agree with the complainant that the listeners would be likely to conclude, from the presenter's description of the complainant as "a man who describes himself as an academic", that he had no published peer-reviewed academic work. The Committee considered that this meaning was not carried either explicitly or implicitly in the presenter's statement.

The Committee took note of the BBC's explanation that, by using the phrase "a man who describes himself as an academic", the programme was trying to acknowledge the fact that the complainant did not have tenure at a university but clearly had academic expertise.

It also noted the response from the *Woman's Hour* Executive Producer which stated:

"...we apologise for not using your phraseology 'independent cross-disciplinary researcher/writer'."

The Committee referred to the evidence provided by the complainant to the Inquiry and noted the following way in which the complainant described himself:

"As a cross-disciplinary researcher and published writer regarding the nature and basis of human sociality (social structure and dynamics), with a special interest in the sexes, in particular I focus on the neglected but crucial necessity of fully understanding the deep biological roots of sex differences that are ineradicable and profound."

The Committee concluded that the complainant had not, in fact, described himself as an "academic" and, having regard to the Editorial Guidelines on Accuracy, it concluded that by saying that the complainant had described himself in this way, the BBC had failed to achieve due accuracy as required by the guidelines. The Committee did not, however, consider that there was any evidence to suggest that *Woman's Hour* had done this knowingly, in a deliberate effort to mislead listeners. It did not therefore consider that the BBC had knowingly and materially misled its listeners.

The Committee considered the section of the Editorial Guidelines relating to Impartiality, and noted the requirement for due impartiality. The Committee was mindful that it had found a breach of the Editorial Guidelines on Accuracy. However, it concluded that there was no evidence of a breach of the Impartiality guideline. The Committee did not take the meaning, as the complainant had done, that Ms Garvey, by using the words "a man who describes himself as an academic", had specifically implied anything about whether the complainant had peer-reviewed work published or not. The Committee concluded there was no evidence of bias against the complainant in this respect.

The Committee then considered the section of the Editorial Guidelines relating to Fairness, Contributors and Consent. The Committee noted the requirement to avoid unjust or unfair treatment of individuals and further noted that material inaccuracies in the way people are referred to may risk causing unfairness. In this case, the Committee considered that there was a material inaccuracy in the way the complainant had been referred to and that this risked causing unfairness. The Committee considered that referring to the complainant as a "man who describes himself as an academic" risked raising a question in

the audience's mind about the complainant's credibility. It concluded that there was a breach of the Editorial Guidelines relating to Fairness.

In summary, the Committee found breaches of the Editorial Guidelines on Accuracy and Fairness in relation to Point (B), but it found no breach of the Impartiality guidelines.

The Committee considered the apology the Executive Producer had offered at stage 1:

"I am sorry that you feel that you had been seriously misrepresented and reiterate that was certainly not our intention and not, we think the case. As I said in my earlier email, we apologise for not using your phraseology 'independent cross-disciplinary researcher/writer'."

The Committee considered whether this apology was adequate to have resolved the matter at stage 1. The Committee's opinion was that it was not, and it had some sympathy with the complainant's opinion that the apology did not appear to be sufficiently meaningful. The Committee noted that in his initial correspondence to the Executive Producer, the complainant had requested an on-air apology. The Committee was mindful that on-air apologies are usually reserved for the most serious breaches of the Guidelines. The Committee considered that, while there was a risk that the statement would have caused some listeners to question the complainant's credibility, the breach was not sufficiently serious in this case to warrant an on-air apology.

This point of appeal was upheld in part.

Point (C) That an interview with Ann McKechin, MP, had not been set up in an impartial way, and that Ms McKechin had misrepresented the complainant's evidence, and this was not corrected by the interviewer, Jane Garvey.

The Committee noted that the Editorial Guidelines relating to Accuracy, Impartiality and Fairness were relevant to this aspect of the complaint.

The Committee noted that the complainant considered that the interview by Ms Garvey of Ann McKechin MP was biased and that his views had been misrepresented by the interviewee. The Committee noted that the complainant said the following in his appeal to the Trust:

"The interview was the usual sort of 'stitch-up' where the anchor sets up the interviewee to collude in misrepresentation, as indeed the MP fully obliged by completely misrepresenting the analysis I provided as being all about sexual attraction, when it was mainly about the contrast between sex-dichotomous social structure and dynamics. This was in no way picked up by the presenter to point out its gross inaccuracy."

Further, the Committee noted that the complainant said there was no attempt at any point by the BBC to provide any balance to the interview. He said:

"Why two totally 'anti' debaters with nobody else present even to act as arbiter, let alone with a different view?! Or any even remotely accurate summation of my submission."

The Committee looked again at the wording of this part of the interview, which was as follows:

Jane Garvey: But why though, for example, consider evidence from a man who describes himself as an academic – Steve Moxon. He's made some pretty controversial comments about women

relatively recently, and indeed he told you that he didn't think that women were capable of being bosses.

Ann McKechin: Well Mr Moxon has some very interesting views, including thinking, saying that the basic male/female working relationship was based on sexual attraction. It's not one that I certainly, I would adhere to, but we wanted to hear different views...

The Committee noted the context that *Woman's Hour* had been reporting on the evidence put to the Inquiry. It noted the specific context to Ms Garvey's question was that there had been some debate about the complainant's views. The question had been raised, the Committee noted, about why the complainant had been asked to give evidence to an inquiry that included in its remit looking at how the numbers of senior women in the workplace could be increased. It noted that the complainant, in his evidence, had questioned this remit, and the assumptions that underpinned it.

The Committee considered that the question posed by Ms Garvey had been a valid one. Its view was that Ms McKechin's response to the question had been to the point. She had explained that, while not necessarily agreeing with the complainant herself, the Inquiry had wanted to hear a range of views. The Committee considered that she had been trying to provide some further context to the complainant's views.

Ms McKechin had said:

"Well Mr Moxon has some very interesting views, including thinking, saying that the basic male/female working relationship was based on sexual attraction. It's not one that I certainly, I would adhere to, but we wanted to hear different views..."

The Committee considered that listeners would likely understand from the wording used by the interviewee, particularly the word "including", that she was providing an example of one of the complainant's views and was not summarising all of his views or analysis. The example given was that "the basic male/female working relationship was based on sexual attraction".

The Committee noted that the complainant's oral evidence to the Inquiry included the following:

"Then there are sexual dynamics. When there are men and women together, the basic interaction is not cross-competition; it is sexual display. Males will display their competitiveness; females will back off from competition..."

The Committee noted that in his written evidence to the Inquiry the complainant had said:

"...competitiveness per se is inimical to how women behave in the presence of the opposite sex: whereas men actually become more competitive as part of their displaying to women; women actually back away from being competitive because this compromises their displaying to men the attributes that confer female mate-value.

"...Mutual sexual display makes a nonsense of the claim that women would confer a benefit to company boards through engendering reduced risk-taking, because their very presence is likely to produce the opposite effect of **greater** male risk-taking behaviour."

Given the complainant's evidence to the Inquiry, the Committee concluded that the example of the complainant's views given by the interviewee was duly accurate and it found no breach of the Accuracy guideline. It considered that there had been no "gross inaccuracy", as suggested by the complainant, and it concluded that there had been nothing for the presenter to correct.

On the question of "balance" in the interview, the Committee noted that the Impartiality Guidelines require impartiality to 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. Taking this into account, the Committee found that due impartiality had been achieved and there had been no requirement for a balancing view in this instance. Looking at the subject and nature of the content and the listeners' likely expectations, the Committee considered that the item in question was not a "pro" and "anti" debate but, rather, an interview about the work of the Select Committee inquiry. Specifically, in this part of the interview, the interviewee had been asked about the evidence considered by the Inquiry. The Committee noted this was an area of interest for the audience.

The Committee considered the section of the Editorial Guidelines relating to Fairness, Contributors and Consent. It noted the requirement for the BBC to avoid unjust or unfair treatment of the complainant. In relation to this point (C), the Committee concluded there was no evidence to suggest the guidelines relating to Fairness had been breached.

In summary, the Committee found no breaches of the Accuracy, Impartiality or Fairness guidelines in relation to this point.

This point of appeal was not upheld.

Point (D) That *Woman's Hour* had over many years displayed unfairness to men generically and had dismissed scientific research.

The Committee noted that the complainant had said in his appeal to the Trust that *Woman's Hour* had for many years perpetrated "the systematic deliberate misrepresentation and wholesale dismissal of science research on men/women" and its behaviour had not been unusual for this programme strand.

The Committee noted that, at stage 2, the complainant had said:

"I should point out that this is a rigid pattern of behaviour by *Woman's Hour*, which has zero integrity when it comes either to science or any sense of fairness to men generically..."

"*Woman's Hour* is a determinedly anti-scientific dinosaur of 40-years-out-of-date extreme feminism and the now wholly discredited 'standard social science model'; a serious blot on the BBC that cannot be long for this world if the BBC is in earnest about public service broadcasting."

The Committee appreciated that these were the complainant's strongly held views but it noted that he had provided no compelling evidence to support them in his appeal to the Trust.

The Committee noted the Executive Producer of *Woman's Hour* had given examples of the science topics covered by the programme, such as the arguments around screening for breast and cervical cancer (both for and against), the use of HRT to counteract the symptoms of the menopause (again, arguments both for and against) and the issues surrounding vaccinating young women against HPV. The Executive Producer also said that

Woman's Hour had covered research on "preference theory" by a social scientist who had appeared with the complainant at the Select Committee Inquiry hearing.

The Executive Producer, the Committee noted, said that the programme did not seek to suppress any one school of scientific thought but tried to reflect a range of opinion, provided that opinion had been peer-reviewed. She said that the aim was to be proportional in the coverage. For example, most of the medical and scientific establishment agreed that screening for cervical cancer was useful, but research in a significant peer-reviewed journal had questioned it, so *Woman's Hour* had covered the debate, she said. Meanwhile, arguments against MMR, for example, were very widely discredited in the scientific establishment, so unless there was a significant shift in published opinion, the programme would not seek to cover the anti-MMR view.

The Committee noted that it was for the programme makers to choose researchers to include in on-air coverage of topics, taking into account which were the best speakers with the most relevant expertise. The Committee agreed that the choice of interviewees and the choice of which scientific research *Woman's Hour* covered in its programme was an editorial and creative matter for the BBC Executive, and not the BBC Trust, to decide.

In response to the complainant's general point about the programme and men, the Committee noted the Executive Producer had said that the brief of *Woman's Hour* was to cover issues which affected women's lives, many of which would also affect or interest the 40 per cent of the programme's daily listeners who were men. She had said the programme aimed to cover as wide a range of topics as possible within a mixed magazine format, so as well as covering harder issues, such as politics, employment, science and international affairs, *Woman's Hour* also regularly featured family life, children and education, as well as personal stories, relationships, cooking and fashion.

Having regard to the Editorial Guidelines on Impartiality, the Committee found no evidence of any breach of the Impartiality guidelines in relation to this aspect of the complainant's appeal.

This point of appeal was not upheld.

Point (E) That the complainant was ignored when he contacted the programme while it was on air to ask for a correction, that the Executive Producer had refused to offer a meaningful apology and, in the later stages of the complaint, she had refused to engage at all.

The Committee noted that in his appeal to the Trust, the complainant had said:

"...the producer stuck to the indefensible line, refusing to apologise in any way – and latterly refusing to reply in any way at all."

The Committee noted that he said that this was in line with previous treatment where his complaints had been dealt with unacceptably.

The Committee noted that the BBC must normally acknowledge serious factual errors in content and correct them quickly, clearly and appropriately, in line with the Accuracy guideline. It further noted that the BBC must ensure complaints and enquiries are dealt with quickly, courteously and with respect, in line with the Accountability guidelines.

The Committee noted that the complainant had initially written to the programme on 18 December 2012 to complain about the misrepresentation of his evidence to the Inquiry and about the way the programme had described his status. He said he wanted an on-air apology. The Committee noted the Executive Producer said that she had been unaware of any complaint during the programme and the first she had known of the complainant's points was when she saw his email later that day. The Committee had already considered the issue of an apology in relation to Point (B), see above. It was the Committee's view that, even if the Executive Producer had seen the complaint while the programme was on air, it would have been unrealistic and disproportionate to require the issues in question to be dealt with by *Woman's Hour* while the programme was being broadcast.

The Committee noted that the complainant had said that the Executive Producer had latterly refused "to reply in any way at all." The Committee looked at the exchanges of correspondence between the Executive Producer and the complainant. It considered that the Executive Producer had responded to the complainant's complaints and once she had reached what she considered to be an impasse, had referred the complaint to the ECU for investigation. This was in line with the Editorial Complaints procedure.

Having regard to the Editorial Guidelines on Accuracy and Accountability, the Committee found there had been no breach of these guidelines in relation to this aspect of the complainant's appeal.

This point of appeal was not upheld.

Finding: One point of the appeal was upheld in part with regard to Accuracy and Fairness. The remaining four points were not upheld.

Coverage of Rangers Football Club, BBC Online

1. Background

This is a consolidated appeal by two complainants who said that a number of reports on the BBC's website were inaccurate in giving the impression that Rangers Football Club, rather than the company which had previously owned the club, had gone into administration/liquidation.

2. The complaints

The complainants said that Rangers Football Club is a separate entity from its parent company and that the club has simply been sold as an asset by one company to another. The complainants therefore believe it was inaccurate of the BBC to describe the club itself as "old", "new" or "relaunched". One complainant believed it was also biased.

Stage 1

Complainant A contacted BBC Audience Services on 8 August 2012. He received a final Stage 1 response from Audience Services, which quoted a response from the BBC's Head of News, on 26 October 2012.

Complainant B wrote to the Director of BBC Scotland and to the Director-General on 5 October 2012. He received an initial reply from the Director of BBC Scotland on 31 October 2012 and, following further correspondence, a final reply, advising him of his right to appeal to the Trust, on 11 December 2012.

Complainant B's letter to the Director-General was answered by BBC Audience Services who, following an exchange of correspondence, advised him on 17 December 2012 that the next step was to escalate the complaint to the Editorial Complaints Unit (ECU) at Stage 2.

Stage 2

Complainant A escalated his complaint to the ECU at Stage 2 of the process on 26 October 2012. The ECU investigated the complaint and sent its decision to the complainant on 22 November 2012. The ECU did not uphold the complaint. The ECU sent its final reply to the complainant on 26 November 2012.

Complainant B escalated his complaint to the ECU on 14 January 2013. The ECU wrote on 16 January to explain that the complaint of general bias was not within its remit to consider.

Appeals to the Trust

Complainant A wrote to the BBC Trust on 28 November 2012 to say that he was not satisfied with the outcome of the ECU's investigation. He said that the ECU had accepted that there was a clear distinction between the company which owned Rangers Football Club and the club itself, and had appreciated that any blurring between the two could, in theory, cause confusion. The complainant said such confusion could be avoided by the BBC referring either to the company that formerly ran the club which is now in administration; or to the new company that now runs the club. He said he saw no reason why the BBC needed to mention phrases such as the "old club" or "new club" in its reporting.

The complainant quoted the ECU decision as saying: "I have discussed your complaint further with a senior manager in BBC News Scotland and he has told me that the policy which has now been agreed is to make the distinction between the oldco and/or newco (or occasionally 'old club'/'new club') when discussing the 'off the pitch' business dealings and to use Rangers when referring to the team on the pitch." BBC Scotland subsequently commented that it would have been more appropriate for the ECU to refer to a practice or an agreement as no formal "policy" was put in place.

Complainant A said he could see no reason why "old club"/ "new club" needed to be mentioned in this context particularly as the ECU had acknowledged that there was a clear distinction between the football club and its parent company. The complainant also said BBC Scotland did not appear to accept the difference between the club and the company. He concluded by saying that his complaint did not appear to have had any effect on BBC Scotland's output, citing an online article dated 27 November 2012 to support his case¹¹. This report was published after the complainant had received his final response from the Executive and so is not part of the complaint that was considered on appeal.

Complainant B emailed the BBC Trust on 13 January 2013 to say that Rangers Football Club's financial predicament had been deliberately portrayed in a negative way. He said this was illustrated by what he described as the BBC's constant reference to the club being "new" after it was bought by a different company.

Complainant B said that Rangers Football Club remained the same club which had started in 1872. He said the former parent company, known as RFC 2012 plc, was heading for liquidation and that its assets had been sold. The complainant said one of those assets was Murray Park but he noted that BBC Scotland did not refer to it as "new" Murray Park. As a result, he said Rangers Football Club should still be referred to as just that, not "new" or "old", but just Rangers.

Complainant B believed the BBC is institutionally biased against Rangers Football Club and that the reference to the club being "new" was an example of such bias. Complainant B pointed out that Celtic Football and Athletic Company Ltd had previously been Pacific Shelf 595 Ltd. He said that adopting BBC Scotland's approach, it could be asserted that Celtic had only been in existence since 1994. However this approach has only been applied to Rangers; not to Celtic. Complainant B also raised other matters relating to alleged institutional bias, which the Trust Unit decided did not qualify for consideration on appeal. The complainant requested that Trustees review the Trust Unit's decision not to accept the appeal on these points.

3. Applicable Editorial Guidelines

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>

The sections on Accuracy and Impartiality are relevant to this case.

4. The Committee's decision

Institutional bias: Request to review Trust Unit decision not to proceed

The Committee began by considering complainant B's request for a review of the Trust

¹¹ <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20520044>

Unit's decision not to accept on appeal elements of his complaint relating to his allegation of institutional bias. The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review the Senior Editorial Strategy Adviser's decision.

The Committee noted that the Trust's Senior Editorial Strategy Adviser (SESA) had written to complainant B on 13 February 2013 explaining that she and an independent editorial adviser had reviewed the appeal correspondence and that the SESA had decided that the only part of the complainant's appeal which had a reasonable prospect of success was that which related to the issue of how BBC Scotland referred to Rangers Football Club after its parent company went into administration/liquidation and the football club was sold. The SESA did not consider that the remainder of the appeal had a reasonable prospect of success and she therefore decided not to put it before the Trust's Editorial Standards Committee.

The SESA had explained to the complainant that the BBC has 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 is unfairly represented. These responsibilities are reflected in the BBC's Editorial Guidelines. The SESA had further noted that the Editorial Complaints Procedure specifies that the BBC may not investigate a complaint if it fails to raise an issue of breach of the Editorial Guidelines.

The SESA had noted that the complainant raised concerns both about how the BBC decided to film Rangers' main football stand and perceived bias in the presenters and pundits chosen by the BBC, but the complainant had not cited any examples of specific content to demonstrate an engagement with, or breach of, the BBC's Editorial Guidelines. As a result, the SESA had thought it was reasonable for the BBC to say that it could not respond further to correspondence on the issue of whether BBC Scotland had a generic bias against Rangers.

The SESA had noted that the complainant had raised a specific concern that the 140th anniversary of Rangers was not marked in the same way as the 125th anniversary of Celtic. She took into account that the way subjects are treated and what examples are used are issues for programme makers. The SESA had advised that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She had explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards. As a result, the SESA had decided that the way in which the respective anniversaries of Celtic and Rangers were treated was a matter of editorial and creative output which the Trust would not consider on appeal.

The SESA had also noted that the complainant raised the issue of BBC Scotland not reporting on the disorder caused by some Celtic fans after a match against Dundee on 26 December 2012, and that the complainant had suggested this would have been different if Rangers' fans had been involved. The SESA had noted, however, that BBC Sport did carry an online article on 28 December 2012 with the headline: "Celtic manager Neil Lennon warns fans over behaviour." She provided the complainant with a link to the full report¹². As a result, the SESA did not consider that this point had a reasonable prospect of success.

¹² <http://www.bbc.co.uk/sport/0/football/20857986>

The Committee noted that the complainant had requested the Trustees review the SESA's decision not to proceed with the above elements of his complaint on the following grounds:

- With regard to his allegation of institutional bias against Rangers FC, the complainant had cited a near riot by Celtic FC fans at Dundee on 26 December 2012 which was hardly mentioned by the BBC. The complainant said that the online article of 28 December 2012 quoted in the SESA's letter of 13 February 2013 was a travesty; it played down the fact that this was a mass brawl and hardly mentioned a near riot. Furthermore, the article only appeared two days after the event, and later than some other media reports. By comparison, some Rangers fans sang unacceptable songs at Berwick and the BBC Scotland website had an article up in a matter of hours.
- The complainant said that the issue of biased presenters and pundits had not been addressed. He said he has no problem with debate when it is fair-handed but that is not the case in the way the BBC reports on Rangers. He cited another example as evidence: recently, a Rangers blogger was invited onto a BBC programme to discuss Rangers related matters. Prior to appearing, the blogger discovered that the panel of anti-Rangers media would include ordinary Celtic fans which the complainant felt was unacceptable.
- The complainant said that BBC Scotland has a list of approximately 30 regular presenters and pundits, almost all of whom are not just pro any other team but are vociferously anti-Rangers. The complainant did not feel that this situation demonstrated fairness or balance.

The Committee considered whether the elements of the complaint relating to institutional bias that were not accepted on appeal raised a "matter of substance" and therefore qualified for determination by the Trust's Editorial Standards Committee. The Committee noted that whether an appeal raises a "matter of substance" will ordinarily mean that it has a reasonable prospect of success.

The Committee noted the complainant's concern about anti-Rangers bias by BBC Scotland and the choice of presenters and pundits during debates about matters related to Rangers FC. The Committee agreed with the SESA that, on the points where the complainant had not provided specific examples of output which could be tested against the Guidelines the BBC had already provided an adequate and proportionate response.

The Committee noted that the complainant had made specific reference to the relative coverage of the anniversaries of Celtic and Rangers, and also to what he considered a lack of coverage of the violence which had occurred at a Celtic match.

The Committee agreed that the way in which the respective anniversaries of Celtic and Rangers were treated was a matter of the BBC's creative and editorial direction and not one the BBC Trust could consider. The Committee was mindful that there are many factors affecting the news agenda on any given day and a comparison of the relative coverage accorded to two different stories on different days was not necessarily evidence of bias.

With regard to the reporting of the disorder at Celtic's game against Dundee, the Committee noted that the BBC had in fact covered this story on the website. The Committee noted that the complainant had described the article as "a travesty". It was mindful that the suggestion that the article was inaccurate was a new complaint which

had not previously been raised and could not therefore be considered on appeal. In relation to the other points raised by the complainant, namely the late reporting of the Celtic game and the BBC's coverage of the Rangers fans' singing at Berwick, the Committee noted that these were matters of editorial and creative output. Again, the Committee noted that many factors affected what is and is not covered on a given day and a comparison between the coverage of the violence at a Rangers match and signing by Celtic fans at another event on another day was insufficient to suggest bias.

The Committee noted the other arguments the complainant had made to support his view that the BBC was institutionally biased against Rangers. It agreed that these were in the main part anecdotal and subjective. The Committee did not consider that they constituted sufficient evidence to justify the in-depth investigation that would be required to substantiate such claims.

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

Appeal finding

The Committee considered complainant A and B's complaint about the BBC's reference to Rangers Football Club as "old", "new" or "relaunched" by reference 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 all the available evidence, including (but not limited to) the Editorial Adviser's report and further comments from complainant B and the BBC.

Accuracy

The Committee considered whether the BBC had breached the Editorial Guidelines on Accuracy in the way that it had referred to Rangers Football Club after the company which used to own the club had gone into administration/liquidation and its assets were sold.

The Committee began by looking at the events surrounding the administration of Rangers Football Club plc. The Committee noted that assets of that company were sold to a company called The Rangers Football Club Limited (which changed its name from Sevco Scotland Limited in July 2012). The Committee considered that differentiating between these two companies and the football club could potentially make this a complicated story to explain to a wide audience.

The Committee noted, however, that the administrators of Rangers Football Club plc, its liquidators and those representing the Scottish football authorities had taken a common approach when explaining how the football club had been affected by this process. The Committee believed that these groups had made clear that in their view the club was a separate entity from these two companies and that its operations were unaffected by either its previous owner being placed into administration or its sale to a new company.

The Committee noted the online reports cited by complainant A in his correspondence with the BBC (complainant B had not cited any specific articles):

Charles Green proud of 'Rangers turnaround'
<http://www.bbc.co.uk/sport/0/football/19173997>

Old Rangers set for liquidation as administration process ends

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-19981266>

Rangers chief Charles Green says sorry to fans for death threats claim

<http://www.bbc.co.uk/sport/0/football/20031931>

Lord Hodge approves liquidation of former Rangers FC

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20141946>

Former Rangers Football Club wins Big Tax Case appeal

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20414804>

The Committee noted other reports which may also be seen to state or imply that the club had become a different entity once it was sold to the new consortium:

Rangers newco owner Charles Green make bigotry claim over SPL rejection

<http://www.bbc.co.uk/sport/0/football/19040706>

Rangers' final tax bill tops £94m, Duff and Phelps reveals

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-19786824>

And some which explained that it was the parent company that went into liquidation and that the football club's status remained unaffected following its purchase by a new consortium:

Rangers boycott SPL commission into dual contracts

<http://www.bbc.co.uk/sport/0/football/19550517>

Rangers: SPL appoint commission to investigate payments

<http://www.bbc.co.uk/sport/0/football/19102870>

The Committee noted that the ECU had considered the broad question of whether it was appropriate to use the oldco/newco distinction and had referred to the following specific articles:

Charles Green proud of 'Rangers turnaround'

<http://www.bbc.co.uk/sport/0/football/19173997>

Rangers 4-0 East Fife

<http://www.bbc.co.uk/sport/0/football/19058945>

Old Rangers set for liquidation as administration process ends

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-19981266>

Rangers chief Charles Green says sorry to fans for death threats claim

<http://www.bbc.co.uk/sport/0/football/20031931>

Lord Hodge approves liquidation of former Rangers FC

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20141946>

The Committee noted that the ECU had concluded that readers would not have been materially misled by the reports in question as they would understand that the company owning the club had changed and the football team that had been in the Scottish Premier League was now playing in the Scottish Third Division. The ECU also stressed that these reports were written for a general audience and so there was no requirement to provide a detailed explanation of the legal difference between the company and the club.

The Committee noted that, in response to the Trust's investigation of this appeal, BBC Scotland had explained how it had chosen to report the relationship between Rangers Football Club and its parent company:

"The relationship of the club to its parent company is complex and integral to the story - and is often perceived differently by various sections of the BBC's audience, depending on their allegiance or perspective. There are no laws governing whether football clubs are legal entities, whereas companies are clearly defined in law as legal corporate entities capable of buying, selling and owning assets or trading on the open market. Therefore, it is important for the BBC to make the distinction between the parent company which owns the club, the actual "football" club itself - and any assets associated with the club (such as players, property etc.) - in order that the audience may understand the story better.

"Rangers Football Club was founded in 1872 as an association football club and was incorporated as a company on 27th May 1899. Rangers fans are of the view that the club remained a separate entity – despite the incorporation into a company – and when the parent company applied for administration on 14 February 2012 (then was subsequently put into liquidation) only the parent company was affected by the process, not the 'club' component of the organisation. This is not a universal view, and certainly carries no legal definition."

The Committee noted the statements issued by the firm appointed as administrators of Rangers Football Club plc, Duff & Phelps, and the way it had presented the relationship between the company and the football club. On 12 June 2012, Duff & Phelps released a statement to confirm the sale of the football club. It said:

"...the Sale and Purchase Agreement in place with the consortium led by Charles Green will take effect and Rangers Football Club will continue within a new company structure."

The Committee noted that, in its interim report into Rangers Football Club plc's administration dated 10 July 2012, Duff & Phelps stated at paragraph 4.4:

"Following the sale of business and assets of the Company, the responsibility for maintaining all trading operations passed to Sevco which continues to operate the Club."

At paragraph 10.9 of the same report, it stated:

"The history and the spirit of the Club have been preserved by the sale which was completed on 14 June 2012 and it is now the responsibility of the new owners to secure its future."

Duff & Phelps released a further statement on 17 October 2012 to announce that RFC 2012 plc was being placed into liquidation. It said:

"Should the application be approved, then Malcolm Cohen and James Bernard Stephen of BDO will be appointed liquidators of RFC 2012 plc, and will undertake the process of liquidation of the 'oldco' company and the continued recovery of funds for creditors. This will not affect the current operations of The Rangers Football Club in any way as it is a completely separate entity."

Meanwhile one of these liquidators, Malcolm Cohen, was quoted as saying:

"It's important to understand that the appointment of liquidators will not mean the end of football at Ibrox – only the end of the company that ran the club."

The Committee noted how the Scottish football authorities had defined the status of Rangers once Rangers Football Club plc had gone into administration and it had been sold to the new consortium. In an interview on Scottish Television on 16 July 2012, the chief executive of the Scottish Premier League said:

“Rangers is an existing club, even though it’s a new company.”

On 27 July 2012, the Scottish Football Association, The Scottish Premier League, The Scottish Football League and Sevco Scotland Ltd issued a joint statement to announce that Rangers would be allowed to play in the Scottish Football Association. In this statement, the chief executive of the Scottish FA, Stewart Regan, was quoted as saying:

“There were a number of complex and challenging issues involved but, primarily, the Scottish FA had to be satisfied that the new owners of Rangers would operate in the best interests of the club, its fans and Scottish football in general.”

The Committee noted that, as part of the Trust’s investigation, BBC Scotland had confirmed its position on differentiating between the football club and the company owning. It stated:

“The BBC did differentiate, where appropriate, between the club and the company owning it. The circumstances which led to the parent company being placed in administration related solely to business matters and not ‘footballing’ matters pertaining to the team on the field. It was the norm for the BBC to make the distinction between business and football issues when conveying aspects of the story.”

The Committee noted a statement made by the former Scottish High Court Judge, Lord Nimmo Smith, who was in charge of an independent investigation set up by the Scottish Premier League to examine whether some of Rangers’ financial transactions during 2000-11 broke the League’s rules. On 12 September 2012, he released a statement about the reasons for the commission. From his legal perspective, he stated at paragraph 6:

“On 14 June 2012 a newly incorporated company, Sevco Scotland Ltd, purchased substantially all the business and assets of Oldco, including Rangers FC, by entering into an asset sale and purchase agreement with the joint administrators. The name of Sevco Scotland Ltd was subsequently changed to The Rangers Football Club Limited. We shall refer to this company as Newco.”

At paragraph 46, he stated:

“It will be recalled that in Article 2 “Club” is defined in terms of “the undertaking of an association football club”, and in Rule I1 it is defined in terms of an association football club which is, for the time being, eligible to participate in the League, and includes the owner and operator of such Club. Taking these definitions together, the SPL and its members have provided, by contract, that a Club is an undertaking which is capable of being owned and operated. While it no doubt depends on the individual circumstances what exactly is comprised in the undertaking of any particular Club, it would at the least compromise its name, the contracts with its players, its manager and other staff, and its ground, even though these may change from time to time.

“In common speech a Club is treated as a recognisable entity which is capable of being owned and operated, and which continues in existence despite its transfer to another owner and operator. In legal terms, it appears to us to be no different from any other undertaking which is capable of being carried on, bought and sold.”

The Committee noted how BBC Scotland said it saw the legal relationship between Rangers football club and its “parent company”:

“Lord Nimmo Smith’s reasonings were included in a report for an independent commission – they are entirely his view, albeit one based on extensive legal experience. His reasonings do not represent the view of company law.”

The Committee recognised that there was disagreement between the parties to this complaint on the legal definition and status of a football club, but considered that this appeal could be determined by focusing on the context and purpose of the items of output in question, rather than on the club’s legal status. The Committee noted that in paragraph 3.1 of the Editorial Guidelines it is stated that “[t]he 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.”

The Committee considered the particular sensitivities of reporting stories involving football clubs, noting that people hold strong views about their clubs, and that this was particularly the case in Glasgow where emotions ran high because of the rivalry between Celtic and Rangers. The Committee was also mindful that a club’s history is of great significance to its fans. The Committee considered that BBC Scotland was aware of these sensitivities. Accordingly, to ensure “due” accuracy in its output, it was incumbent on the BBC to use language that was clear and precise and, taking into account the likely audience expectation, adequate and appropriate to that output..

The Committee noted the view of BBC Scotland that the club was not a legal entity separate from the companies which owned it. However, the Committee considered that a significant number of readers, particularly where articles were on the Sport webpages, would consider references to “Rangers” to be a reference to the team and all that that implies, rather than to the company that for the time being owns the assets. The Committee considered that, where there was no clarification provided in the article, this is the natural interpretation that readers would take.

The Committee noted that the reports cited by the complainant were published between 7 August 2012 and 27 November 2012, and the Committee considered that in this period much of the confusion around the future of Rangers Football Club had been resolved. The Committee noted that by this time the club had been sold to a new consortium and it had been agreed that it could play in the Scottish Football Association. As a result, the Committee agreed that the BBC should have been in a position to report the issues surrounding Rangers with greater clarity and precision than it had done in these articles.

The Committee agreed that, on balance, and taking into account the sensitivities noted above, where the purpose of the item of output is to discuss football and the club, then it was not appropriate to make a distinction between an “old”, “new” or “relaunched club”. Conversely, the Committee agreed that if the item of output related to the companies that owned the club and, for example, financial performance or corporate structures, then distinguishing between the “old” and “new” company could be integral to the subject.

The Committee concluded that the choice of the right language by the BBC was highly dependent on the purpose and context of the output, including the intended audience and, for example, whether it was a sport story or a business story. The Committee agreed that, while there was no reason to treat the football club itself as “new” simply because the assets that make up the club had been transferred from one company to another, there was good reason to distinguish between “newco” and “oldco” when referring to the owning companies and the corporate transactions involved in the sale of the club.

The Committee noted in particular the following examples where it considered that the BBC had not been precise about the distinction between Rangers Football Club and its owners, or had referred to the club as being relaunched or new:

Charles Green proud of 'Rangers turnaround'

"...It was the first game at Ibrox since the new owners were denied a place in the top flight and had to relaunch the club in Division Three..."

<http://www.bbc.co.uk/sport/0/football/19173997>

Old Rangers set for liquidation as administration process ends

"...The former Rangers football club is to be put into liquidation after creditors approved an end to the administration process which began on 14 February..."

"...The old club, which remained in administration, has since been known as RFC 2012. The new club, started by Mr Green's consortium, began life in the Scottish Third Division..."

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-19981266>

Rangers chief Charles Green says sorry to fans for death threats claim

"...But Rangers supporters have since rallied behind the new regime's team, now playing in Division Three after the old club that was part of the Scottish Premier League headed for liquidation..."

<http://www.bbc.co.uk/sport/0/football/20031931>

Lord Hodge approves liquidation of former Rangers FC

"A judge has approved a motion for the former Rangers Football Club to be handed over to liquidators..."

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20141946>

Former Rangers Football Club wins Big Tax Case appeal

"The former Rangers Football Club has won an appeal against a tax bill over its use of Employee Benefit Trusts.

The club, which is now in liquidation, used the scheme from 2001 to 2010 to make £47.65m in payments to players and staff in the form of tax-free loans..."

"HMRC subsequently rejected proposals for a creditors' agreement that would have allowed the old club to continue.

Administrators Duff and Phelps then negotiated a sale of assets to a consortium led by Charles Green for £5.5m.

He has since formed a new club, now playing in the Scottish Football League Third Division..."

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-20414804>

The Committee therefore concluded that where (as in the above cited reports) the BBC had made the distinction between an "old" and "new" Rangers in output referring to and related to football and the club as opposed to the "old" and "new" company, the BBC had not used clear, precise language and due accuracy had not been achieved such that the Guidelines on Accuracy had been breached.

The Committee also considered whether the BBC had knowingly and materially misled its audience. The Committee was satisfied that although there had been a breach of the Editorial Guidelines in relation to due accuracy and the use of clear and precise language, it had not seen anything to suggest that the BBC had knowingly and materially misled its audience. The Committee noted this was a complex subject and it considered that the use of imprecise language was likely to have been as a result of that complexity.

Impartiality

The Committee considered the allegation that the BBC's references to "old" Rangers and "new" Rangers were a result of anti-Rangers bias.

The Committee again noted the sensitivities of reporting on Celtic and Rangers football clubs. The Committee accepted that BBC Scotland would be aware of the concerns in this area. The Committee was mindful that, in considering the various allegations of bias that had come before it in this and other appeals, it had concluded that there was insufficient evidence to support such a finding. The Committee was also mindful that in this case it had found a breach of the Accuracy Guidelines. The Committee wished to stress the need for rigorous reporting to avoid the perception of a lack of impartiality. However, having regard to the Editorial Guidelines on Impartiality and taking into account the subject and nature of the content, the Committee was satisfied that they had seen nothing to suggest a lack of due impartiality in this case. Again, the Committee noted that it was likely to be the complex nature of this particular story that had led to the use of imprecise language.

The Committee agreed that there were no grounds on which to uphold the complaint of bias and it wished to reiterate its view that it had seen no evidence which would lead it to conclude that there had been any breach of the Impartiality Guidelines.

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

Rejected Appeals

Appeals rejected by the ESC as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

The Grammar School: A Secret History (Parts 1 and 2) **– 5 and 12 January 2012 – BBC Four**

This complaint was undersigned by a group of 16 academics and education professionals. The complainants asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit that the complainants' appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainants wrote to the Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold their complaint alleging lack of objectivity and balance in the BBC's recent treatment of the history of post-war education. They referred specifically to *The Grammar School: A Secret History*, broadcast in two parts on BBC Four.

The complainants stated that *The Grammar School: A Secret History* made broad and critically unexamined assertions about the value and effectiveness of selective education in both pre- and post-war Britain. They said that both episodes contained factual errors, ignored research evidence and gave a seriously misleading account of current public education.

In the complainants' view, the episodes should not have been broadcast without the inclusion of a critical counter-view, which might have included evidence gathered by the Organisation for Economic Co-operation and Development (OECD) of the negative effects of selective school systems. Arguing that the ECU had wrongly rejected the premise of this point of complaint, the complainants cited nine examples in support of the contention that the issue of selective schooling was being debated at above local authority level.

The complainants alleged that the ECU had largely ignored the detailed explanation of the complainants' dissatisfaction with the BBC's stage 1b response, and had simply rehashed parts of it in what the complainants considered to be an evasive and doggedly pedantic manner. In the complainants' view, all the ECU's points had previously been refuted in its letter to the ECU of 4 May 2012. The complainants referred the Trust to that letter.

The appeal also made the following points about the handling of the complaint:

- (a) The complainants considered some of the BBC's arguments (e.g. its insistence that the selective education system had provided five prime ministers) to have been stubborn to the point of childishness.
- (b) The complainants described as "disgraceful" the BBC's alleged attempts to discredit the views of the programme's researcher and the work of the historian Derek Gillard.
- (c) The complainants noted that there had been no adequate explanation of why the ECU was unable to respond to the stage 2 complaint within the 35-working day target time for complex complaints. The complainants speculated that, in the absence of further correspondence with the BBC's Chief Complaints Editor, the

- complainants might still be awaiting a response.
- (d) The complainants felt that they had not been accorded the respect they were due given the professional backgrounds of the signatories to the complaint. They took issue with the use of the term “longitudinal research” and whether it had been used appropriately. Further, the complainants queried what lay behind the decision to refer to the production company as “one of Britain’s leading independent TV companies”.

The complainants concluded by stating that, whereas most of the time they felt nothing but admiration for the BBC, on this occasion they had been extremely disappointed by its apparent lack of regard for proper standards of discussion and debate.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) replied to the complainants explaining that she had reviewed the correspondence and watched both episodes. She said that she did not consider that the appeal had a reasonable prospect of success and concluded that it should not proceed to be considered on appeal by the Editorial Standards Committee of the Trust.

The letter was detailed and what follows is a summary of the key points.

Accuracy

The Trust’s Adviser noted that the requirement for “due accuracy” means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Trust’s Adviser noted that the requirements for due accuracy may vary depending on the output, and may even vary within a genre. For example, an investigative documentary will have a higher requirement for accuracy than a panel show referring to the same subject.

Subject and nature of the content

The Trust’s Adviser noted that the complainants had referred to the series as “the BBC’s recent treatment of the history of post-war education”. However, the Executive Producer took issue with the breadth of this description and asserted that the episodes were commissioned not as a history of post-war education, but “to look at the place and achievements of grammar schools – and specifically personal experience of those schools – within that history”.

The BBC Online webpage for episode two described the subject of the programme as “the golden age of the grammar schools in the 1950s and 60s and their sudden demise”. The BBC Online webpage for episode one described the programme’s content as “personal stories and rare archive footage”.

The Trust’s Adviser considered that the series did not purport to offer a history of post-war education but aimed to present a “slice” of that history. The series’ scope was confined to a specific period in the history of grammar schools, and its content was determined by the particular aspects of the subject that were revealed by contributors’ personal experiences.

Likely audience expectation

With regard to the likely audience expectation for the series, the Trust’s Adviser referred

to BBC Four's Service Licence and considered that BBC Four's audience would be engaged and demanding, but non-specialist. She did not consider that viewers would have shared the complainants' close interest in—and often professional engagement with—educational issues. The Trust's Adviser considered that the level of analysis that the complainants would have preferred to see exceeded that which a general viewer would have expected in this particular type of programme.

The Trust's Adviser could not agree that a general audience would necessarily have considered inaccurate the alleged inaccuracies that the complainants cited. The Trust's Adviser considered that viewers would have been likely to regard the disputed assertions as fair comment on matters in respect of which reasonable persons might disagree.

Signposting that might have influenced the audience's expectation

The Trust's Adviser noted that the series was subtitled *A Secret History*. She observed that this description was likely to pique a prospective viewer's curiosity with the suggestion that the episodes would be offering a story that (for unspecified reasons) had not previously been told.

The Trust's Adviser also noted the continuity links to episode one and episode two of the series, as well as the BBC Online webpages cited above.

The Trust's Adviser concluded that such signposting would have led the audience to expect, not an academic critique of selective education, but the previously untold story of a so-called "golden age" of the grammar schools and their alleged "sudden dissolution", narrated by means of personal accounts and rare archive footage. The Trust's Adviser believed viewers would have been likely to expect the series to contain a considerable volume of material that was personal, and therefore subjective, and would have been aware of the need to evaluate its reliability accordingly.

Requirements of the genre or sub-genre

The Trust's Adviser considered that the tone and content of the series placed it firmly within the category of popular—as distinct from scholarly—history. She said that the series was aimed at a broad, general (but nevertheless discerning) audience without any specialist historical skills, knowledge, academic qualifications or expertise. She considered that the series' treatment of the subject therefore favoured compelling personal detail, vivid narrative colour and engaging emotional themes over dispassionate, academic analysis. In the view of the Trust's Adviser, the requirements of due accuracy in relation to an item of popular history are less exacting than those applicable to a corresponding scholarly work.

The Trust's Adviser further noted that the series was an oral history documentary. She said that the telling of a factual story from a variety of personal perspectives necessarily encompasses a greater element of subjectivity than does a conventionally narrated documentary. Such documentaries allow voices that might otherwise have gone unheard to tell previously neglected stories, and enable alternative and minority perspectives to be more widely shared.

The Trust's Adviser noted the programme contained contributors' reminiscences about formative events that had occurred during their childhood, and that its tone was accordingly reflective, considered, sometimes nostalgic, sometimes painful. Given the length of time that had elapsed between the events being described and the present day, viewers would, in the view of the Trust's Adviser, have been likely to expect the series' narration to correct any material inaccuracies or imprecisions contained in contributors'

accounts. However, she said viewers would also have been likely to regard those accounts—provided they were the authentic expression of contributors’ subjective experiences—as a valid, primary historical source.

With these considerations in mind, the Trust’s Adviser shared the ECU’s expectation that viewers would have been sufficiently well acquainted with the conventions of this form of documentary to be able to distinguish between contributors’ feelings about their own experiences (on the one hand) and the arguments about systemic merits and demerits (on the other).

Alleged “broad and critically unexamined assertions”

The Trust’s Adviser noted that the complainants had cited eight examples of alleged broad and critically unexamined assertions in the series. The Trust’s Adviser considered each of these allegations in detail. She noted the reasons put forward by the complainants as to why they considered the assertions inaccurate, as well as the responses from the Executive Producer and the ECU.

The Trust’s Adviser took into account the tone and content of each statement, the content and context of the series – a popular history documentary – as a whole, the likely audience expectation, any signposting that might influence that expectation, and the requirements of the genre and sub-genre. She concluded in respect of each statement complained of, that the series had achieved due accuracy and had not been misleading.

Alleged factual errors

The Trust’s Adviser noted that the complainants had cited four examples of alleged factual errors in the series. The Trust’s Adviser considered each of these in turn. She noted the reasons why the complainants considered each of the facts to be wrong, and she also noted the responses given by the Executive Producer and the ECU. Taking into account the context of the series – a popular history documentary for a general audience – as well as the likely audience expectation, the Trust’s Adviser explained why in her view each of the examples cited by the complainants had been duly accurate.

Accuracy: conclusion

The Trust’s Adviser considered that, overall, the standard of accuracy was adequate and appropriate to the output, and that the series was duly accurate. The Trust’s Adviser found there was insufficient evidence to support the complaint that the series was seriously inaccurate. Nor did the Trust’s Adviser consider it appropriate, proportionate or cost-effective for the ESC to consider this point of appeal. The Trust’s Adviser therefore decided that this aspect of the appeal had no reasonable prospect of success.

Impartiality

The Trust’s Adviser noted that the Editorial Guidelines require “due” impartiality, which means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

The Trust’s Adviser noted that the complainants’ appeal had asserted that the programme should not have been broadcast without the inclusion of a critical counter-view. However, she considered that the guidelines do not require the inclusion of a critical counter-view in order to achieve due impartiality.

Controversial subjects

The Trust's Adviser noted that there are particular requirements relating to impartiality when dealing with a "controversial subject". The Trust's Adviser considered the complainants' argument that, following the election of the present government and the appointment of the incumbent Secretary of State for Education, selective education has returned to the political agenda and is being debated at national (and not merely local) level. She also considered the evidence the complainants had adduced in support of that contention.

In the view of the Trust's Adviser, the subject of the series was not selective education in general, but the place and achievements of grammar schools—and contributors' personal experiences of those schools—in the 1950s and 1960s in particular. It therefore seemed to the Trust's Adviser that the history of grammar schools, and the experiences of those who had attended them, were not controversial subjects within the meaning of the Editorial Guidelines.

Although the Trust's Adviser did not believe that the Trustees would agree that the subject was a controversial one within the meaning of the guidelines, she nevertheless considered whether, if the series' subject was a controversial one, the requirements relating to controversial subjects had been met.

The Trust's Adviser noted that guideline 4.4.7 states:

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

The Trust's Adviser noted that the series had included the personal accounts—some of them extremely touching—of adult contributors whose interests as children had been ill-served by the system of selective education. She considered these personal testimonies illustrated a variety of demerits in the selective system.

In the opinion of the Trust's Adviser, the programme makers had ensured that a sufficiently wide range of significant views and perspectives were given due weight and prominence, and had clearly distinguished opinion from fact.

The Trust's Adviser noted that where a controversial subject is a "major matter" within the meaning of Editorial Guideline 4.4.9, it will normally be necessary to ensure that an appropriately wide range of significant views are reflected. The Trust's Adviser noted that the issue of educational selection had an especially controversial resonance in relation to Northern Ireland, and that there had been some debate about increasing the number of grammar school places within the existing law. However, the Trust's Adviser did not consider that the current level of debate across the UK as a whole was such as to make the issue of educational selection a "major matter" within the meaning of the guidelines.

Editorial freedom

The Trust's Adviser noted that the guidelines permit the exercise of "editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so".

It seemed to the Trust's Adviser that the nub of the complaint was that the programme makers had not made the programme that the complainants would have made, had they

had editorial control. The Trust's Adviser noted that the Executive Producer had said that:

"There have been many television programmes made on comprehensive schools and their history over the past two decades—but the story of the achievements of grammar schools have been lost in the heat of the linked, but much wider, debate about selection."

In the view of the Trust's Adviser, the fact that this particular story—of grammar schools' heyday and near-demise—had hitherto been subsumed by the wider debate on selective education amounted to a good editorial reason for making a programme on the subject.

Omission of additional counter-views

Noting the critical counter-views included in the series through contributors' personal accounts of selective education, the Trust's Adviser did not agree that the series was "largely uncritical" of selective education, as the complainants had suggested.

With regard to the complainants' argument that the series ought to have included written material such as the OECD's findings, the Trust's Adviser took the view that programme makers' editorial freedom entitled them to include the material they chose—although the Trust's Adviser noted that it would not be straightforward to incorporate this type of written information into a programme based on personal testimony.

In conclusion, Trust's Adviser considered that the omission of additional, critical counter-views did not render the programme biased.

Sentimentality

With regard to the complainants' argument that the series' account of its subject was inappropriately sentimental, the Trust's Adviser noted that the programme contained the reminiscences of contributors about formative events that had occurred during their childhood, and its tone was at times reflective, considered, sometimes nostalgic, sometimes painful.

She explained that The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draws a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She noted that "the direction of the BBC's editorial and creative output" is specifically defined in the BBC's Charter (paragraph 38(1)(b)) as a duty that is the responsibility of the Executive Board, and is one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

In this instance, the Trust's Adviser considered that whether or not the series was sentimental was not an issue that fell within the Editorial Guidelines. With regard to the tone of delivery of the narration and the choice of musical soundtrack, the Trust's Adviser believed these were appropriate to the stories they accompanied, and it was a matter of the programme makers' editorial freedom to choose the music they preferred.

As to the debate that arose between the complainants and the ECU with regard to how the soundtrack might be classified, the Trust's Adviser considered this was not an issue that could be assessed against the guidelines. The Trust's Adviser agreed that certain sections of the episodes might have raised an emotional response in viewers, but it seemed to her this was in keeping with a programme based on personal recollection.

The Trust's Adviser considered that the programme makers had taken sufficient steps to

inform viewers that there was an element of debate around selective education, and had not manipulated the audience's sympathies. She noted and quoted from commentary in both episodes of the series which referred to the debate existing at the time and today.

The Trust's Adviser did not consider there was evidence to suggest that the programme makers were attempting to manipulate the audience's sympathies for or against any of the policy arguments surrounding the subject. She therefore determined that there was no reasonable prospect of success on this point.

Impartiality: conclusion

The Trust's Adviser concluded that the standard of impartiality presented in the series was adequate and appropriate to the output, and that the programme was duly impartial. The Trust's Adviser therefore concluded there was insufficient evidence to support the complaint that the programme was biased, and she decided that the appeal had no reasonable prospect of success on this point.

Accountability

The Trust's Adviser considered the points the complainants had raised in their letter of appeal to the Trust relating to the adequacy of the ECU's response and the handling of their complaint.

Adequacy of the ECU's reasoning

The Trust's Adviser noted the complainants' view that the ECU had largely ignored the arguments set out in their letter of 4 May 2012. She referred to the Accountability Guideline which requires the BBC to provide adequate reasoning for its decision.

The Trust's Adviser noted that in the preamble to its decision, the ECU identified the complainants' points by reference to their letter of 22 February 2012, but she did not consider this necessarily implied that the ECU had not also considered the complainants' comments in their letter of 4 May 2012.

Accuracy

The Trust's Adviser could not agree that the ECU's decision failed to address the comments made by the complainants in relation to accuracy in their letter of 4 May 2012. The Trust's Adviser could not see any evidence for the complainants' assertion that the ECU had rehashed previous responses: it seemed to the Trust's Adviser that the ECU brought a fresh and fair-minded perspective to bear upon the criticisms raised under these points of complaint.

First page of letter of 4 May 2012

With regard the following points set out on the first page of the complainants' letter of 4 May 2012, the Trust's Adviser took the view that these were adequately addressed by the ECU in the course of its reasoning:

- the complainants' statement of their case
- the distinction the complainants sought to draw between the programme's aims and its effect
- the complainants' contention that selective education had returned to the political agenda

- the complainants' contention that the programme's omission of an equal voice offering an alternative point of view had fallen short of the BBC's high standards of impartiality
- the complainants' critique of the BBC's responses
- the complainants' view of the notion of "due" impartiality as "obscurantist"
- the complainants' comments on the programme's tone, and the inferences they drew about the programme makers' sympathies
- the complainants' citation of the programme researcher's letter, and the arguments they derived from it.

Selection of material/use of research

The Trust's Adviser noted that the ECU had considered one aspect of the Robbins Report (1963) when dealing with the accuracy of the programme's reference to the proportion of grammar school-educated students at Oxford and Cambridge in the early 1960s. With regard to the remainder of that report, the Crowther Report (1959) and *Education and the Working Class*, Jackson and Marsden (1962), the Trust's Adviser noted that the ECU had not expressly responded to the complainants' allegations that the programme had failed to take such research evidence into account.

The Trust's Adviser took the view that the selection of material is a matter of editorial discretion and, being a matter concerning "the direction of the BBC's editorial and creative output", is not one in which the Trust involves itself unless, for example, it relates to a breach of the BBC's editorial standards by rendering the series inaccurate, misleading or biased. The Trust's Adviser considered the arguments on this point against the guidelines on accuracy and impartiality.

She noted the arguments put forward by the complainants to support their view that the series failed to make any reference to important research on selective education. She also noted the Executive Producer's response and the complainants' criticisms of that response.

The Trust's Adviser took the view that the programme was not a "serious historical treatment" in the sense the complainants intended. In her opinion, it was not necessary for a popular oral history documentary such as this, on a clearly and narrowly defined subject, to present an exhaustive and forensically detailed account of all the evidence relating to the much broader subject of which it formed a part, provided the omission of such evidence would not have misled the audience.

The Trust's Adviser accepted that the programme makers were well acquainted with the research cited by the complainants, and that they had relied upon aspects of that research in telling the particular story that they wanted to tell. In her view, the fact that the complainants would have preferred the programme makers to have used different aspects of the same research to present a different story did not necessarily indicate that the programme was biased or inaccurate.

The Trust's Adviser could not agree with the complainants' contention that the programme's central narrative insisted that selective education took little account of social class and offered a ladder of opportunity to all. She noted the programme focused primarily on the experiences of contributors who had attended grammar school, including those who had belonged to the working class. Given the specificity of this focus, the Trust's Adviser could not agree that the statement that, after the Second World War, the proportion of working class pupils increased dramatically was inaccurate or misleading.

In the view of the Trust's Adviser, the programme had acknowledged the difficulties faced

by working class children who had gained places at grammar school. In light of the stories of contributors who had left school early, the Trust's Adviser could not agree that the programme failed to take account of Crowther's finding that working class children were far more likely to leave grammar schools at 16 than their middle class counterparts. The Trust's Adviser could not agree that the contributors who had left school early had been portrayed in the ways described by the complainants. It seemed to her that viewers would have been able to form their own views of their reasons for leaving school prematurely, on the basis of their first-hand accounts.

With regard to the issue of working class children's divided loyalties, the Trust's Adviser noted the commentary stated in episode two: "But, despite the pride the new working class pupils felt in their school, they could experience divided loyalties."

This was followed by a contributor's account of playing football (perceived in grammar schools to be a working class sport) with a tennis ball during lunchtime in deliberate defiance of authority. The Trust's Adviser could not agree that the manner in which the contributor told his story was any indication of the programme makers' views, or that the inclusion of this account amounted to "making light" of working class pupils' divided loyalties.

The Trust's Adviser noted that the commentary of episode two continued:

"Working class children were often pulled one way by the grammar school world with its promise of success and upward mobility, and pulled another by loyalty to family and friends who had no such pretensions...".

There followed a contributor's account of being "cut to the quick" by the accusation that he had become "lah-de-dah", which evoked the unwelcome prospect of estrangement from his family and prompted in him a determination not to change. This was succeeded by the story of another contributor who was reprimanded by her parents for behaving very differently from them on returning home from boarding. There then followed an account of another contributor's mortification when her limited vocabulary was revealed in class. In the view of the Trust's Adviser, these contributions offered vivid, first-hand accounts of some of the difficulties faced by working class grammar school pupils.

With regard to the complaint that the programme offered only the slightest hint of criticism of grammar schools' inability to respond to working class pupils' particular needs, it appeared to the Trust's Adviser that no blame towards children who did not fit in was imputed by the programme's commentary, and that the comments quoted by the complainants did not bear out this proposition. In her view, that certain grammar schools were inflexible was implicit in the accounts discussed above, and viewers would have been likely to infer from those contributors' stories that the grammar school system was unable adequately to meet the needs of certain working class pupils.

For these reasons, the Trust's Adviser concluded that there was insufficient evidence that the omission of any express reference to certain findings of the reports cited by the complainants had made the programme inaccurate or biased. She therefore decided that the appeal had no reasonable prospect of success on this point. Nor did the Trust's Adviser consider it appropriate, proportionate or cost-effective for the ESC to consider this point of appeal.

Alleged "stubbornness" of BBC's responses

Having considered all the correspondence in this complaint, the Trust's Adviser could find no evidence to support the complainants' assertion that the BBC had advanced its

arguments stubbornly, to the point of childishness. The Trust's Adviser did not consider the appeal had a reasonable prospect of success on this point and it should not, therefore, be put before the ESC.

Alleged attempts to discredit both the programme researcher's and education researcher's work

The Trust's Adviser noted that the complainants alleged that the BBC had attempted to discredit the views of both the programme researcher and the work of education researcher Derek Gillard (whose statistics the complainants had cited in their complaint). They described this alleged attempt as "disgraceful".

The Trust's Adviser said that statements made by the BBC about an email sent from a researcher on the programme, which the complainants alleged revealed the intentions of the programme makers, served to place the researcher's comments in context, and she could see no evidence of any attempt to "discredit" the researcher's views. The Trust's Adviser considered that the ECU's reference to the researcher was no slight on her, but was a pertinent acknowledgement of her position. The Trust's Adviser considered that the researcher's email—sent in her capacity as a junior member of the production team and for the purpose of notifying contributors of the programme's imminent transmission—did not warrant the evidential weight that the complainants attributed to it.

The Trust's Adviser also considered that the BBC's references to Mr Gillard, and its critique of his statistics, fell far short of attempting to "discredit" his work, as the complainants had claimed.

The Trust's Adviser therefore concluded that there was insufficient evidence to support this complaint, and the appeal had no reasonable prospect of success on this point.

Delay at stage 2

The Trust's Adviser noted that the complainants set out their substantive complaint in their letter to the ECU of 4 May 2012. The ECU's provisional decision was dated 19 October 2012. The response time was therefore 120 working days, which was a clear breach of the Accountability Guidelines and a significant failure to meet the target set by the Editorial Complaints and Appeals Procedures.

The Trust's Adviser noted that the ECU had accepted its error and apologised for it. She said she was sure the Trustees would also wish her to add her apologies.

The Trust's Adviser noted that, in response to the appeal to the Trust, the ECU commented as follows:

"The main reason for delay ... was an unprecedented succession of urgent and time-consuming demands over and above the normal business of complaints-handling, all of them time-consuming and most of them urgent. Any complaint which required several days of more or less uninterrupted concentration (and ... [this complaint] fell into that category) suffered delay, because something else always came up whenever it looked as if I might be able to devote a big enough slab of time to it..."

The Trust's Adviser explained that, where the Executive accepts a breach of the Editorial Guidelines, apologises and explains, the Trustees normally consider the matter resolved (unless there are features to the breach which suggest it is so serious that further action may be necessary). The Trust's Adviser did not believe that this matter raised such

serious issues that further action would be required. She therefore decided that this point of appeal did not have a reasonable prospect of success as it had, in her view, been resolved.

Allegation of lack of due respect

The Trust's Adviser noted that the complainants said in their letter of appeal that the BBC had misused the term "longitudinal research" and had "foisted" it upon the complainants. In their letter to the ECU of 4 May 2012, the complainants quoted an unspecified dictionary of academic terms as stating that "a longitudinal study is a correlational research study that involves repeated observations of the same variables over long periods of time – often many decades".

The Trust's Adviser did not accept that the Executive Producer's references to the programme makers' "longitudinal perspective" and Professor Greenslade's "new longitudinal research" were "foisted" upon the complainants, or that his use of the term "longitudinal" had carried any element of disrespect.

The Trust's Adviser could discern no element of disrespect in the Executive Producer's description in his email of 27 January 2012 of the programme maker as "one of Britain's leading independent TV companies...". She noted that the sentence continued: "...specialising in social history with many national and international awards and over a hundred history documentaries to their credit."

In the view of the Trust's Adviser, the Executive Producer was seeking to establish the programme maker's credentials, and was not attempting to reduce the complainants to respectful silence, as they had alleged.

For these reasons, the Trust's Adviser concluded that there was insufficient evidence to support this element of the procedural complaint.

Accountability: conclusion

The Trust's Adviser concluded that there was insufficient evidence to support the complaint under the guidelines on accountability. She therefore decided that the appeal had no reasonable prospect of success on this point. Nor did the Trust's Adviser consider it appropriate, proportionate or cost-effective for the ESC to consider this point on appeal. The Trust's Adviser therefore decided that the appeal had no reasonable prospect of success on this point and that there was no case for the BBC Executive to answer.

The complainants requested that the Trustees review the decision not to proceed with the appeal. They said that they were disappointed that notwithstanding the great length and apparent attention to detail of the Trust's response, it was a mere rehash of what they had already received from the programme's Executive Producer and the ECU.

The complainants said that it had become clear to them that the BBC's complaints process is seriously lacking in integrity, lacks the independence that the BBC claims for it and is designed chiefly to protect the institution from possible embarrassment rather than to examine complaints on their merits.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the programmes in question.

The Committee noted the detailed arguments made by the complainants in support of their complaint about the programme. The Committee also noted the complainants' concerns about the handling of their complaint.

The Committee agreed with the Trust's Adviser that the series did not purport to offer a history of post-war education but, rather, aimed to present a slice of that history. The Committee considered that the series' scope was confined to a specific period in the history of grammar schools, and its content was determined by the particular aspects of the subject that were revealed by contributors' personal experiences.

The Committee considered whether there was a reasonable prospect of an appeal being upheld as amounting to a breach of the Editorial Guidelines. The Committee considered that *The Grammar School: A Secret History* was an entertainment series made for a general audience, and it considered this to be a crucial point. Bearing in mind the subject and nature of the content and the likely audience expectation, the Trustees agreed that they would be likely to conclude that it was not necessary for the series to offer a critique of selective education or to be neutral on every issue to achieve due accuracy and due impartiality. In terms of "signposting", the Committee agreed that the information given to the audience would have led them to expect a programme which contained a great deal of personal recollection that was inevitably subjective, rather than an analysis of post-war education.

The Committee agreed that it would be likely to conclude that the standard of accuracy was adequate and appropriate to the output, and that the omission of additional, critical counter-views did not render the programme partial or biased. The Committee concluded that the appeal did not have a reasonable prospect of success on these grounds.

With regard to the handling of the complaint, the Committee acknowledged that there had been a failure to meet the target response time set by the Editorial Complaints and Appeals Procedures. However, the Committee noted that the ECU had accepted its error and apologised for it, and that the Trust's Adviser had also apologised on the Trust's behalf. The Committee considered that it would therefore be likely to find that this aspect of the complaint had been resolved.

The Committee agreed that there was insufficient evidence to suggest that the other elements of handling the complaint had a reasonable prospect of being upheld on appeal as amounting to a breach of the guidelines on accountability.

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

Tony Livesey (Presented by Colin Paterson), BBC Radio 5live, 7 June 2012

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Head of Editorial Compliance & Accountability, BBC News, not to uphold his complaint regarding a debate held on the *Tony Livesey* show (on this occasion presented by Colin Paterson) which posed the question "What does it mean to be English?". The complainant felt that the premise for the debate, which was sparked by a speech on the subject by Ed Milliband, was wrong.

The complainant noted that there was no English state as such and in his view the question of "what does it mean to be English?" could only be answered in an ethnic or racial sense. He challenged the choice of contributors to the debate and said that the contributors' ethnicity should have been made plain to listeners.

The complainant alleged that implicit in the BBC's response at stage 2 was the assertion that, at the present time, Englishness can reasonably be defined as an inclusive, non-racial and multi-ethnic identity. The complainant considered such a claim to be wrong.

The complainant made the following arguments in his appeal:

1. The claim that Englishness can reasonably be defined as an inclusive, non-racial and multi-ethnic identity would be "much less provocative" if it referred to English citizenship. But England is not an independent sovereign state and, therefore, there are no English citizens; there is not even an English parliament.
2. The claim is at variance with important judgements of the UK courts. (See BBC Scotland v Souster).
3. The claim is at variance with modern scholarship (e.g. www.englishdiaspora.co.uk).
4. The attempt by the Head of Compliance & Accountability, BBC News, to draw a distinction between on the one hand "racial and ethnic" Englishness, and on the other hand, a "sense of belonging" in her assertion that it is possible to be English "even if your heritage is not English" is wrong when viewed in the light of academic articles such as the one in the *Journal of Counselling Psychology* 2007, 54.3; 271-281, which states that a "sense of belonging is perhaps the most important component of ethnic identity".

The complainant said that there were two related reasons why he found it hard to understand how the debate could possibly have conformed to the BBC's Editorial Guidelines (6.2.1) requiring programme makers to be "straightforward" with their audiences. In summary, he argued that:

- i. The definition anyone gives of Englishness depends on his or her own nationality: whether it is endogenous or exogenous, the definition will necessarily be very different. However, the programme makers did not inform the audience of the racial or ethnic backgrounds of the contributors.

- ii. Listeners were not told about what the complainant called the “very curious device” that underpinned the debate. The complainant said the debate had been constructed so that the four contributors would divide equally on the question of whether England should have its own parliament. He considered that the views of the two contributors opposed to a parliament for England, Sunny Hundal and Joseph Harker, related to their ethnicity, and he alleged that there was a risk, in this case, of seriously misleading listeners by not making this clear to them.

Finally, the complainant said that, in his correspondence at stage 2, his references to Mr Hundal’s Sikh background had nothing directly to do with religion. He said his concern related to ethnicity in general.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) replied to the complainant explaining that she had reviewed the correspondence and listened to the relevant part of the programme and she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust’s Adviser considered that the parameters of debate about the question “What does it mean to be English?” were entirely for the BBC to set, in line with the Impartiality Guidelines which say:

4.2.3

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

4.2.4

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

4.2.5

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

The Trust’s Adviser said that the decision about how to frame the debate on “What it means to be English” was a matter for the Executive and not one which engaged the guidelines. Therefore, it was not appropriate for this element of his complaint to proceed to the Trust.

The Trust’s Adviser noted that the Executive had considered the content against the Impartiality Guidelines.

The Trust’s Adviser noted that the complainant objected to a device which pitched a supporter of an English parliament against a journalist who did not support such a parliament. In her view there was no reasonable prospect of success for an appeal based on the suggestion that due impartiality was not achieved by giving air time to both sides of the question.

With regard to the question of whether the ethnic backgrounds of the speakers ought to have been disclosed to listeners and whether it was “straightforward” of the programme not to do so, she noted that the BBC’s second stage response said that, while it might

have been better to do so, in fact the debate was wide-ranging and balanced and the identity of the speakers was of less importance than the content of what was said.

The Trust's Adviser noted that the complainant considered that in not making clear the ethnicity of the contributors, the programme makers had been in breach of the Fairness Guideline which states:

6.2.1

We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety, or confidentiality.

The Trust's Adviser noted that a fairness complaint could only be made by someone who has personally been treated unfairly in BBC content or someone who has authority to represent them. (This is set out in paragraph 1.5 of the Editorial Complaints and Appeals Procedure at

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

The Trust's Adviser instead considered this aspect of the appeal in terms of the Impartiality and Accuracy Guidelines.

The Trust's Adviser noted that the complainant had suggested that details about the religion and ethnic backgrounds of Mr Hundal and Mr Harker should have been shared with the audience. The Trust's Adviser noted that, in response, the Head of Editorial Compliance and Accountability for BBC News had said that, while "it might possibly have been helpful to have stated that Sunny Hundal was not only the editor of a left-wing blog, but also that he was a former editor of *Asians in the Media*", she did not consider that Mr Hundal's religion was relevant to the debate. Further, she said she could "see that for context it might have been helpful if Joseph Harker had been described at some point as proud of his African heritage" and she "discussed this with the programme editor ... who acknowledges these points." However, she and the programme editor did not agree with the complainant that "the omission of these details somehow skewed the debate."

The Trust's Adviser noted the complainant had said on appeal that this was not about religion, it was about ethnicity.

The Trust's Adviser was of the view that the Editorial Guidelines did not require or imply that those expressing an opinion had to belong to any particular group, party or ethnicity. She considered that the BBC may well have added an extra dimension to the debate by giving information on the ethnicity of the participants but the absence of that information did not detract from or render void the opinions they had voiced.

The Trust's Adviser noted that the complainant had suggested people from ethnic minorities might be disadvantaged in the event of a break-up of the United Kingdom and the advent of a new definition of Englishness. She noted his conclusion that this lay behind the views of the two journalists who contributed to the programme. The Trust's Adviser did not agree that the audience would have been misled by not being told the ethnicity of the two journalists, or that it was possible to conclude that this was what lay behind the views of the journalists.

The Trust's Adviser concluded there was no reasonable prospect of success for this complaint.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal.

The complainant disagreed that cultural identity was the subject of the debate and cited the relative lack of references to the cultural heritage of the contributors.

The complainant reiterated his view that being born in England was neither a sufficient nor necessary prerequisite for being ethnically English.

The complainant clarified that he did not object to supporters of an English parliament being pitted against journalists who opposed it, but he thought that it was fundamentally unbalanced given that the supporters of an English parliament both declared their ethnicity while those opposing it did not. The complainant concluded from this that although listeners may have reasonably inferred that the two contributors who favoured an English parliament were undoubtedly affected by their English heritage, the listeners could not have reasonably inferred from the content of the debate that Mr Hundal's and Mr Harker's respective ethnic backgrounds affected their opposition to an English parliament.

The complainant did not agree with the Trust's Adviser that providing "information on the ethnicity of the participants" was not important. He reiterated his view that ethnicity had a crucial bearing on the matter under discussion.

The complainant said that he could not understand how the Trust's Adviser could not conclude that the contributors' ethnic backgrounds lay behind their opposition to an English parliament when, he said, they had both expressed in online articles their opinions about English national identity from the standpoint of their respective ethnic backgrounds. The complainant said that the BBC's claim that details about Mr Hundal's British Sikh heritage, and Mr Harker's British African heritage, would have added merely an optional extra dimension, rather than an essential one, did not stand up to analysis.

Finally, the complainant posed two scenarios which he said were "inconceivable". The first questioned whether references in the discussion to "toxic" and "particularly dangerous" aspects of English national identity "would have gone unchallenged by the presenter had they been made ... by an Englishman" about Mr Harker's views. The complainant said it was "inconceivable that the ethnic identity of the Englishman would not have been divulged" in this situation. The second asked if the BBC had invited four contributors to answer the question "What does it mean to be British Sikh?", it would "be necessary to research on the Internet to discover that two of the contributors ... were members of other ethnic minorities". The complainant said that if the BBC considers the above suggestion is invalid, he would like to know the reasons why.

The Committee's decision

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

The Committee noted the complainant's view that ethnicity was a crucial element of the debate about what it means to be English, and that the ethnicity of the contributors should have been made explicit in the programme. The Committee considered that this was not the only possible position on the subject of "Englishness"¹³. The Committee was mindful that it normally only considers complaints under the guidelines on fairness from those who allege that they have personally been treated unfairly, or those with the authority to represent them. The Committee decided that there was no question of any

¹³ Amended on 24 July 2013. The sentence originally read "The Committee did not agree that this was the only possible position on the subject of 'Englishness.'"

personal unfairness to the complainant and therefore it was not appropriate for this complaint to be considered under the guidelines on fairness.

The Committee noted that the BBC Executive had acknowledged at stage 2 that it might have been helpful to include on the programme some further information on Mr Hundal's background not only as the editor of a left-wing blog but also as former editor of *Asians in the Media*, and that for context it might have been helpful if Mr Harker had been described at some point as being proud of his African heritage. However, the Committee agreed that this information was not necessary to understand the opinions they had voiced on the programme, and the lack of any additional context had not led to a failure to achieve due impartiality.

The Committee noted the hypothetical scenarios the complainant had envisaged in his response to the Trust Unit's decision not to proceed with the appeal. The Committee was mindful that its remit is to hold the BBC Executive to account for its compliance with the Editorial Guidelines. The Committee agreed that the content against which to consider the Editorial Guidelines was that which had been broadcast in the programme in question, rather than content which may or may not be broadcast in future.

Having regard to the Editorial Guidelines' requirements for due accuracy and due impartiality, the Committee agreed that there was no reasonable prospect of it finding that due accuracy and due impartiality had not been achieved in the debate.

The Committee concluded that the appeal did not have a reasonable prospect of success.

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

Twitter Q&A with Jeremy Bowen

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Head of Compliance & Accountability, BBC News, not to uphold his complaint of alleged bias regarding a Q&A held on Twitter on Rosh Hashanah, 17 September 2012.

The complainant considered that it was unacceptable for the BBC Middle East Editor Jeremy Bowen to hold a Q&A on Rosh Hashanah as it was a day when a very interested set of British licence fee payers, Jews in Britain, would be unable to participate. He said that the vast majority of Jews spend this day in prayer at synagogue and are thus not available to participate in social media exercises such as this Q&A.

He asked whether Mr Bowen would have held such a Q&A on a Friday during Ramadan, thus disenfranchising British Muslims.

The complainant cited a report into three complaints about Mr Bowen published by the ESC in April 2009.

The complainant said that he found Mr Bowen's response at stage 1 unacceptable and quite offensive. Mr Bowen said that he did know the date of the broadcast was Rosh Hashanah, and he also knew that it didn't stop quite a few Jews using social media. The complainant felt this was a comment aimed at him personally, as he is Jewish but not at all observant.

The complainant also said that the stage 2 response from the Head of Compliance & Accountability, BBC News, was "weak and unconvincing".

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she had reviewed the relevant correspondence and she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser determined that the appeal engaged the BBC's Editorial Guidelines on impartiality.

The Trust's Adviser considered the first element of the complaint, that holding the Q&A on a Jewish High Holy Day denied Jews the opportunity to participate.

The Trust's Adviser noted that this was indeed a High Holy Day when many Jews spend time in the synagogue and when many observant Jews would not consider it appropriate to engage in online debates.

She noted that, on 16 September 2012 at 6.06 am Jeremy Bowen tweeted: "Tomorrow (Monday) I'm answering your questions on the #Mideast on twitter. Details are all here bbc.co.uk/news/world-middle-east-19601920".

The Trust's Adviser noted that people who wished to submit questions were able to do so in advance via email and via Twitter and Facebook. Given that Rosh Hashanah did not commence until sundown that day, the Trust's Adviser considered that observant Jews who wished to submit questions would have had the opportunity to do so before Jewish New Year began.

The Trust's Adviser went on to consider the subject and content of the Q&A, which was broad ("the #Mideast"). Many questions related to the topical issue of protests against the film *Innocence of Muslims*. Other questions related to the aftermath of the Arab Spring, the role of Turkey in Middle Eastern politics, the situation in Syria, the role of social media in the region, the prevalence of arms in Libya, the likelihood of a war between Israel and Iran, the vulnerability of Lebanon given current tensions, the foreign policy of the United States and the United Kingdom, the potential for a future independent state of Kurdistan, the future for Palestinians and the stability of kingdoms such as Morocco and Jordan.

The Trust's Adviser noted that there were many questions about Mr Bowen's role as BBC Middle East Editor: had he ever been pressured or censored, what was his most dangerous assignment, how had technology changed his job, and what career advice would he offer aspiring journalists?

The Trust's Adviser noted that the BBC was not setting out to debate one specific issue such as settlements on the West Bank; instead the audience set a wide-ranging agenda.

The Trust's Adviser noted that the Q&A was not a one-off. A subsequent Twitter event was held on 14 December 2012 and received a similarly broad range of questions, although in this case the audience was more preoccupied with the situation in Syria.

The Trust's Adviser noted the comments of BBC News, that those who wished to contact Mr Bowen could do so at any time via his Twitter address @BowenBBC, where he regularly responds to questions and comments about events in the Middle East (and the BBC's coverage of them).

The Trust's Adviser concluded that there were multiple opportunities for the BBC's Middle East Editor to answer questions from observant Jews and therefore that this element of the appeal had no reasonable prospect of success.

The Trust's Adviser went on to consider the second element of the complaint, that Mr Bowen's response to the complainant had been "quite offensive". She noted that the complainant had tweeted:

"Culturally insensitive to hold q&a session on Rosh Hashanah. Didn't you know or are you trying to avoid Qs from Jews?"

Mr Bowen replied: "not trying to avoid Qs from religious Jews. agree timing could be better. will be doing this again."

The complainant: "So you did know today was Rosh Hashanah?"

Mr Bowen: "yes I did know it was Jewish New Year. And I also know it doesn't stop quite a few Jews using social media!"

Complainant: "not most. So you knew it was Rosh Hashanah but went ahead anyway. What will BBC Trust think? Would you hold one during Ramadan?"

The Trust's Adviser noted that Twitter is a medium in which the maximum length of a message is 140 characters. The nature of interaction via this medium is necessarily brief. The Trust's Adviser noted that Mr Bowen had responded quickly to the complainant's comments, and his replies were frank ("agree timing could be better"), promising a future opportunity for live Q&A ("will be doing this again"). The Trust's Adviser could find no evidence that Mr Bowen was offensive. His observation that Jewish New Year "doesn't stop quite a few Jews using social media!" was prefaced by "And I also know..." which suggested he knew this from experience. Whether this was an observation about friends or colleagues, or simply an observation about contact he'd received himself during Rosh Hashanah was unknown, but there was no evidence that this was either an offensive comment or a personal attack on the complainant.

In this case, the Trust's Adviser did not consider there was evidence that the guidelines had been breached therefore she concluded that there was insufficient evidence to suggest that the appeal had a reasonable prospect of success.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He said that Rosh Hashanah began at sundown on 16 September, and that this meant there would not have been an ample opportunity for Jews to post their questions via email, Twitter and Facebook. The complainant alleged that the questions that might have been asked were "skewed" and more difficult questions from Jews excluded.

The complainant noted that the Trust's Adviser had suggested Mr Bowen "knew from experience" that Jewish New Year "doesn't stop quite a few Jews using social media". The complainant said that although the BBC had said that Mr Bowen's observation had suggested that he knew this from experience, there seemed to have been no inclination for the BBC to check this with Mr Bowen himself.

The complainant referred to the comment from the Trust's Adviser that "there was no evidence that Jeremy Bowen had made either an offensive comment or a personal attack on the complainant". The complainant objected to this as although he had stated that he found Jeremy Bowen's comments offensive, he had not said they were a "personal attack". The complainant explained in his appeal challenge letter why he found the comments offensive:

"...by stating that he knows that just because it was one of the holiest days in the Jewish calendar, this does not prevent some Jews from using Social Media Jeremy Bowen is insulting those Jews who are observant and do not use Social Media on religious holy days. He is saying, other Jews use Social Media and so could they. Would he insult observant Muslims in a similar way?"

The complainant said that the BBC had not addressed the point he had previously made asking if Mr Bowen would hold such a Twitter Q&A during Ramadan. The complainant said this was relevant as it shows which religious followers Mr Bowen took into account in terms of causing offence towards them, and which he does not.

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 allegation that the timing of the Q&A was

evidence of bias against Jews.

The Committee noted the Twitter conversation that took place between the complainant and Mr Bowen. They noted that Mr Bowen had responded quickly to the complainant's comments. The Committee noted that the complainant had found some of Mr Bowen's comments in that conversation offensive: in particular Mr Bowen's statement that he knew Jewish New Year did not stop "quite a few Jews from using social media".

The Committee considered that Twitter is a conversational medium and messages are necessarily brief. In this context, the Committee considered that Mr Bowen was making a simple statement that some Jews did use social media at this time. The Committee concluded that there was no evidence to suggest that Mr Bowen was insulting either observant or non-observant Jews. The Committee agreed that there was not a reasonable prospect of success on appeal for this element of the complaint.

The Committee noted that Mr Bowen had acknowledged that the timing of the Q&A could have been better and had also promised a future opportunity for a similar live Q&A. The Committee noted that the Q&A had been announced on the morning of the day on which Rosh Hashanah would begin at sundown. The Committee considered that this left a substantial period for observant Jews to submit their questions. Furthermore, the Committee noted the comments of BBC News, that those who wished to contact Mr Bowen could do so at any time via his Twitter address @BowenBBC, where he regularly responds to questions and comments about events in the Middle East (and the BBC's coverage of them).

Having regard to the Editorial Guidelines on impartiality, the Committee did not conclude that the way the Q&A had been arranged meant that the debate was not duly impartial. The Committee noted that the subject of the Q&A was broad and was about the Middle East. The Committee also noted that there was no specific agenda or issue, but that the topic was the Middle East generally. The Committee further agreed that Jews had not been excluded as the complainant had alleged. The Committee considered that observant Jews had the opportunity to submit questions to Mr Bowen before sundown or on another occasion. The Committee agreed with the conclusion of the Trust's Adviser that an appeal on the grounds of bias would have no reasonable prospect of success.

The Committee noted that the complainant had said the BBC had not answered a hypothetical question about whether a similar Q&A would be held during Ramadan. The Committee was satisfied that determination of whether the Q&A session which had actually been held was duly impartial did not depend on an answer to this question. The Committee agreed that the relevant facts were those relating to what had actually occurred, rather than what may or may not have happened in different circumstances. The Committee noted that the BBC had not answered the complainant's hypothetical question, but it agreed that the lack of an answer could not be taken as evidence in support of the complainant's allegation of general bias.

The Committee noted that the complainant had cited previous ESC findings to support his allegation of bias in this instance. The Committee wished to make it clear that its 2009 findings related solely to the content considered by the ESC in those findings and should not be seen as constituting a finding of any general bias on the part of Mr Bowen.

In conclusion, having regard to the Editorial Guidelines, the Committee did not consider that the appeal had a reasonable prospect of success.

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

ECU decision not to reply to an out of time complaint

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Editorial Complaints Unit (ECU) not to respond to his complaint regarding *BBC News at Six* because it had been escalated outside the 20-working day time limit.

The original complaint concerned alleged bias in the BBC's reporting of employment data. The ECU declined to respond because the complaint had been escalated outside the time limit set out in the procedures and the complainant had given no reason for the delay. The complainant contacted the Director-General's office, again giving no reasons for the delay, and was advised that he could appeal to the Trust against the ECU's decision not to answer the complaint.

The complainant contacted the Trust via his MP, enclosing his previous correspondence with the BBC. The complainant said that, although the News item stated that women had been hit harder in the employment figures, there continued to be fewer women unemployed than men. In the complainant's view, the fact that this and other related facts were not mentioned was an example of an alleged feminist and Marxist bias by the BBC.

The complainant argued that the figures for women's unemployment were rising because over recent decades more women had entered the workforce, but they still had not caught up with the figures for men, and he added that many women still expected men to be the main earners which placed disproportionate stress on men.

The complainant also argued that other aspects of the item revealed bias, such as the use of the term "cutbacks" which suggested the unemployment was caused by government decisions rather than a wider recession.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she had reviewed the correspondence and watched the relevant parts of the programme and she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser had considered the complainant's request for an appeal against the decision by the ECU not to accept the complaint because it had been escalated out of time.

The Trust's Adviser said that the BBC had advised the complainant of the complaints procedure and the timescales set down within it. She noted that under the Complaints Framework, the timeframe for appealing to the ECU was 20 working days following the final stage 1 response, and that the complainant had appealed in 27 working days. She noted that the ECU had written to the complainant to clarify if there were any reasons that explained the delay, which would allow them to consider the complaint. She noted that the complainant had given no response to this enquiry. She therefore considered that Trustees would consider it reasonable for the ECU to have declined to accept the

complaint and it followed from this that the complainant's appeal did not have a reasonable prospect of success on this point.

Additionally the Trust's Adviser noted that the complainant's appeal was sent to the BBC Trust, via his MP, on 8 January 2013 and did not include any indication why the complaint had been escalated to the ECU (stage 2) out of time.

Nevertheless, the Trust's Adviser considered whether the complaint was so serious that it should have been accepted by the ECU even though it was out of time. The Trust's Adviser noted that the news presenter, George Alagiah, had introduced the News item, and that this introduction was followed by a filmed report by the correspondent, Hugh Pym.

The Trust's Adviser noted the relevant parts of the script:

George Alagiah: Unemployment in Britain has reached a 17-year high leaving more people out of work than at any time since 1994.

...Almost a million young people are now out of work – that is a record, and women have been hit harder than men, more than a million are now unemployed.

and

Hugh Pym: ...the North East of England has the highest unemployment of any region or nation around the UK and what's more it's been growing at the fastest rate. The North East also has the highest proportion of its workforce in public sector jobs so it's seen as being especially vulnerable to government cutbacks.

The Trust's Adviser noted that, introducing a case study of a young woman, Hugh Pym stated: "Female unemployment is the highest since 1988...".

The Trust's Adviser noted that the complainant had argued that the report referred to "cutbacks disproportionately affecting women". However, the report did not state that women had been disproportionately affected by cutbacks.

The Trust's Adviser said that, as noted by the BBC at stage 1 of the complaint, the reference to "government cutbacks" was clearly in the context of public sector jobs. She noted that the young woman interviewed in the report had been made redundant from a government job. The report stated that women had been "hit harder than men" and that female unemployment was "the highest since 1988".

The Trust's Adviser noted that the response from BBC Complaints of 2 March addressed this point:

"We have reviewed this news report and we do not agree with your complaint that we broadcast a statement that women were being disproportionately affected by public sector spending cuts. When we referred to government cutbacks affecting jobs in the report, we clearly stated that it was in relation to public sector roles."

The Trust's Adviser agreed with that analysis.

The Trust's Adviser also noted that the report began by stating the rise in unemployment

generally, before referring to two groups who had been particularly affected – young people and women. The Trust’s Adviser noted the complainant’s views that women were only just catching up with men in terms of unemployment. She agreed with the complainant that the impact on men of being unemployed—and the feeling that they were not able to provide for their families—was potentially very harmful; however, she noted it was not the subject of this report.

The Trust’s Adviser noted that the complainant had supplied Office for National Statistics (ONS) figures which she said showed that the changes in employment rates over the last year were still worse for men than women. The Trust’s Adviser said that while that was the case, the figures highlighted in the report with respect to women were the fact that unemployment had reached more than a million and that women’s unemployment was higher than at any time since 1988.

The Trust’s Adviser noted that BBC Complaints had stated that “...we do acknowledge that the report could have made clearer the reasons why female unemployment was proportionately higher in comparison”.

On consideration of the report and the context for it, the Trust’s Adviser agreed that the phrase “women had been hit harder than men” might have benefitted from additional information. However the Trust’s Adviser did not consider that the absence of that clarification led to bias.

The Trust’s Adviser noted and quoted from the BBC’s Editorial Guidelines which require BBC output to be duly accurate and duly impartial.

The Trust’s Adviser considered that the News item included newly released statistics and case studies and, having considered the report in the light of the guidelines, she concluded there was no evidence to suggest the report was not duly accurate and duly impartial.

The Trust’s Adviser noted the complainant’s comments regarding his allegation of feminist and Marxist bias but she did not consider there was evidence to support this allegation.

The Trust’s Adviser concluded that the underlying complaint did not raise issues of substance and therefore she considered the ECU was right to not take on the complaint because it was out of time.

The Trust’s Adviser did not, therefore, consider that the appeal against the ECU’s decision not to take the complaint had a reasonable prospect of success.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal.

The complainant did not make any points with regard to the ECU’s decision to call his complaint out of time. However, he did set out his arguments as to why he considered the item to be biased, summarised as follows:

- without the “additional information” which the BBC and the Trust’s Adviser had referred to, most viewers of the report would be left with the impression that women were suffering more than men, when the ONS statistics revealed that the opposite is true, i.e. it is men who are currently suffering most in unemployment

- the fact that women’s unemployment had been specifically addressed, while the greater men’s unemployment had not, indicated strongly a deliberate policy to put out misleading information
- the Trust’s Adviser had not addressed his point that there had been repeat broadcasts of the same information on days when the information was not associated with newsworthy events
- the complainant reiterated his view that this specific issue should be seen against a background of what he alleged to be feminist and socialist bias in BBC broadcasts over the last few decades.

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 ECU had not accepted the complaint because it had been submitted to them outside the 20-working day period stipulated by the complaints procedure. The Committee noted that, despite being asked, the complainant had not provided reasons for the delay.

The Committee agreed that the complaint had been escalated to the ECU outside the 20-working day limit and there had been no reasons for the delay provided to enable the ECU to decide whether, exceptionally, it would take the complaint. The Committee noted that reasons for the delay had not been provided when the complainant escalated his complaint to the Trust. The Committee concluded that, on this basis, there was no reasonable prospect of success for an appeal against the ECU’s decision not to investigate the complaint.

The Committee agreed that, exceptionally, in certain circumstances, the issues raised by a complaint may be sufficiently serious to override the time limit set by the procedure. The Committee considered whether the issues raised by the complainant in this case indicated that an exception should be made.

The Committee noted that the complainant was critical of the BBC’s decision to highlight in the report certain aspects of the official unemployment figures, namely unemployment figures for women and unemployment figures for the public sector, while not covering aspects which he considered to be of more importance, namely the unemployment figures for men. The Committee noted that the complainant perceived this to be an example of what he alleged was feminist and Marxist bias.

The Committee noted that the BBC had acknowledged that the report could have made clearer the reasons why female unemployment was proportionately higher in comparison, and that the Trust’s Adviser had said that the phrase “women have been hit harder than men” might have benefitted from additional information. The Committee did not share the complainant’s view, however, that without this information, the audience would be left with an inaccurate impression that women were suffering more than men as a result of unemployment. The Committee did not agree that the report would have had the general effect of downplaying the impact of unemployment on men.

The Committee was mindful that the Editorial Guidelines on impartiality allow for the freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so. The guidelines also state that

due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue.

The Committee noted that the complainant had cited an alleged general feminist and Marxist bias at the BBC. The Committee considered that it had not seen evidence in this or any other appeal which would lead it to conclude that such an allegation had substance.

The Committee therefore agreed that the complaint was not sufficiently serious to override the time limit set by the procedure

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

Panorama: Price Tag Wars, BBC One, 17 September 2012

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint regarding the allegation that *Panorama: Price Tag Wars* concentrated on the Israeli narrative, largely neglecting the Palestinian narrative.

The complainant said he was concerned about "the overall impression of the situation of the Palestinians that was provided by the programme". He alleged that the programme's message was that the "price tag gangs" are primarily an Israeli problem rather than (both directly and indirectly) a Palestinian problem. He listed what he termed as "some significant errors that illustrate an undue reliance on the Israeli narrative".

The complainant said it was not just a matter of inaccurate facts. He said that it came down to looking at the overall message that was conveyed by the programme and that to achieve impartiality it was important to consider the accuracy and balance of the background information as well as that of the central subject – the activities of the "price tag gangs".

The complainant said that most of the stage 1 and 2 responses to his complaint concerned the activities of the Israeli "price tag gangs". He said that he had no means of knowing whether or not the programme was factually accurate in that respect but he said that was irrelevant because he had not raised any criticisms of this aspect of the programme. He said that his complaint arose from the fact that the "price tag gangs" operate within the context of the Israeli military occupation of the Palestinian West Bank. He acknowledged that it was inevitable (and correct) that the programme had included some background information about the Palestine/Israel conflict. He said that the gangs' primary adversaries are the Palestinians but they also attack Israelis when they consider that Israel is making concessions to the Palestinians. He said that was why the Palestinians are involved in the story of the "price tag gangs".

The complainant reiterated that his central complaint was that the programme concentrated on the Israeli narrative, largely neglecting the Palestinian narrative.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she had viewed the programme and did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser considered the complainant's appeal points, as well as his overall correspondence at the various stages of the complaint, against the relevant Editorial Guidelines on accuracy and impartiality. Using the numbering set out in the appeal her reasoning was as follows:

Point 1

The Trust's Adviser noted that the ECU, at stage 2, had observed that the reference to East Jerusalem as "the Arab area of the city" came near the beginning, as Jane Corbin (the presenter) was explaining what was going on in the film:

Jane Corbin: It's 2 am in East Jerusalem, the Arab area of the city. It's dangerous for Israeli youths to be here – especially when they're up to no good. This is a price tag gang. They've never been filmed in action before.

The Trust's Adviser noted that the complainant argued that it was more than the Arab area of the city: it was "actually Palestinian Territory that is occupied by Israel".

The Trust's Adviser considered the response from the ECU Complaints Director, who said he took the complainant's broad point that East Jerusalem was regarded by the international community as "occupied territory", but said that the point of this section of the film was to explain how dangerous it was for the youths to be there, "especially when they're up to no good". She noted he said he did not think it was necessary to reflect the views of the Palestinians, the Israelis or the international community on the status of East Jerusalem in those circumstances.

The Trust's Adviser agreed with that conclusion and considered that, in the context of the film showing the activity of the price tag gang, the description of East Jerusalem as "the Arab area of the city" was duly accurate and duly impartial.

Point 2

The Trust's Adviser noted the context of the phrase "there's a price to pay for any attempt to give land to Palestinians" in the relevant section of the programme:

Jane Corbin: The Jewish youths say they're here to get even with Arabs.

Youth: Last night the Arabs burnt one of our houses and there was a dog in it. That's why we want revenge.

Jane Corbin: And they want to send a message to their own government too – there's a price to pay for any attempt to give land to the Palestinians.

Youth: It's a little revenge attack to show we're not taking the situation lightly, so they won't do it again.

The Trust's Adviser noted the complainant's view that "give" was an inappropriate word in the context because the land did not belong to Israel in the first place and, used in this way, would be "misleading to the uninitiated".

The Trust's Adviser noted the ECU's response that Ms Corbin had been reflecting how the gang would have seen the situation: they believed the land was theirs and opposed any notion that the Israeli government might give up its claim to the disputed land as part of any peace settlement.

The Trust's Adviser agreed with that conclusion and considered that the phrase was duly accurate and duly impartial in the context. Additionally, she considered the likelihood would be that most *Panorama* viewers would not come in to the category of the "uninitiated" and would have some understanding of the history and politics of the issue.

Point 3

The Trust's Adviser noted the relevant context of the disputed phrase, "even by their own government":

Jane Corbin: They might look like vandals but price taggers are a new and dangerous phenomenon – branded Jewish terrorists even by their own government.

She noted that it came shortly before this section:

Jane Corbin: Across the West Bank there's a war of attrition going on between the hilltop youth and their own security forces. The Israeli police are trying to stop them establishing new footholds, outposts on this land. Price tags are the hilltop youth's revenge.

She noted the complainant's view that this suggested Israel was a stranger to terrorism when, the complainant argued, "the state of Israel is built on terrorism".

The Trust's Adviser noted that at stage 1, the editorial staff at *Panorama* had made the following statement:

"...the programme stressed the Israeli Government's use of the term 'terrorist' as this is usually a word used by Israel to describe their enemies. In this context, it showed how seriously the Israeli government viewed this activity."

She considered that was a reasonable response to the complaint and was a reasonable interpretation of the phrase. She considered that most viewers would be likely to understand the phrase in that way, too, although she appreciated the complainant's perspective.

Point 4

The Trust's Adviser noted the context of the next disputed phrase:

Jane Corbin: And this is where they [the youth] come from – the hilltops of the West Bank, Arab territory occupied by Israel since the 1967 war.

For thousands of years this land has been disputed between Arab tribes and the tribes of Israel. And now there's a new tribe. They call themselves the hilltop youth and they've sworn to sacrifice everything to keep this land.

The Trust's Adviser noted that the complainant said the statement "For thousands of years this land has been disputed between Arab tribes and the tribes of Israel" was untrue and was seriously misleading. He set out details of how, historically, communities had lived in comparative harmony and the "conflict specifically between Jews and Arabs has been a characteristic of the 20th and 21st centuries and is a consequence of the Zionist project".

She noted that the complainant had said an additional complication was that the European and American Jews who immigrated "do not constitute 'tribes of Israel'. In fact, Jews do not comprise an homogeneous population...".

The Trust's Adviser noted the historical justifications given by the BBC for the phrase at stages 1 and 2, as well as the complainant's perspective and clearly detailed study of the matter.

She noted that BBC Complaints responded to this point, stating:

"We believe it was accurate to say that the land has been disputed for thousands of years. While the modern stage of the conflict can be seen as reigniting alongside the growth of Zionism, the land has been a matter of contention and has resulted in instances of violence during the age of Caliphs, the Crusades and through the reign of the Ottoman Empire."

The Trust's Adviser noted this point was further addressed by the ECU Complaints Director, who stated:

"I think it is generally recognised that the Jewish people make their claim on the land of Israel, at least in part, on the basis that the Twelve Tribes of Israel lived there as far back as 1000 BC/BCE. The Palestinians, by contrast, say the Canaanites came into Palestine from the shores of the Arabian Peninsula around 1,500 years before that. Although it's true to say that disputes over the land have not been confined to Arabs and Jews, I am satisfied that in the context of this report, viewers would have understood that Ms Corbin was reflecting the fact that both the Israelis and the Palestinians say they have a historic right to the disputed land."

The Trust's Adviser agreed with the Complaints Director's analysis and noted the guidelines on accuracy which require programme makers to bear in mind "the likely audience expectation". She considered what the reporter was trying to say, what understanding the audience would have taken from what was said, and whether the audience, as a consequence, would have been misled.

The Trust's Adviser considered that the general *Panorama* audience would not have expected a complex analysis of Jewish ancestry or the tribes of Israel. She considered that the context was to indicate that this was an historically long-disputed area, and that a new "tribe" had now joined the dispute (though obviously not a tribe in the sense that it considered it had its own separate ancestry). In that context, she considered the phrase was duly accurate and duly impartial.

Point 5

The Trust's Adviser noted that this point concerned the questioning of Mark Regev (the Israeli government spokesman). She noted the complainant's view that Mr Regev "is perhaps the most effective propagandist that Israel has; he is very skilful".

The Trust's Adviser said that her view was that questioning in this case was appropriate and relevant to the matter in hand, and she did not consider there was evidence that the programme failed to be impartial as a result of the questions asked. She appreciated that the complainant would have wished to have seen Mr Regev pressed harder and in more detail in relation to some wider matters, but she considered that the decision over which questions to ask and how hard to press him were matters of editorial judgement that sat with the programme makers and were not issues in which the Trustees would generally intervene.

Point 6

The Trust's Adviser noted the complainant's view that the programme interviewed the wrong advocate of the Palestinian cause. The Trust's Adviser noted that this element related to the effectiveness or otherwise of the advocate for the Palestinian cause. She considered that Salam Fayyad, as the Prime Minister of the Palestinian Authority, did not appear to be an unreasonable choice in the context, though she appreciated that the complainant's perspective may have meant he would have preferred another advocate. Again, the Trust's Adviser considered there was no evidence that the guidelines on impartiality had been breached. She said that decisions about which contributors should be invited to take part in a broadcast were matters of creative and editorial judgement which were a matter for the Executive and which the Trust would not normally intervene in.

Finally, in relation to the complainant's conclusions about the "overall impression of the situation of the Palestinians that was provided by the programme", the Trust's Adviser noted the various, extensive examples that were given at stages 1 and 2 of the points in the film where the effect on Palestinians of the action of the settlers was strongly represented. She noted the response from the ECU Complaints Director, which stated:

"It seems to me that the key question, therefore, is whether the programme gave an accurate and appropriately balanced assessment of the 'price taggers', which includes their motivations, the consequences of their actions and the significance of what is, at least on one level, an internal Jewish conflict between the 'price taggers' on one side and the army and the government on the other. [...] the programme achieved the necessary due impartiality on this point by explaining the motivation of the 'price-tag' gangs but also the impact of their actions on the Palestinians. Ms Corbin began her report, for example, by showing footage of a gang who she said were in East Jerusalem and explained: 'The Jewish youths say they are here to get even with Arabs', followed by a contribution from one of the gang who said, 'Last night the Arabs burnt one of our houses and there was a dog in it. That's why we want revenge'. Viewers would have been aware that the 'price tag' gangs were protesting against what they see as aggression by the Palestinians. However, as you may recall, the programme then went on to include a number of sequences which detailed violence by 'price taggers' against Palestinians."

The Trust's Adviser considered that the examples then provided—which ranged from vandalism to violence—meant the programme had given a reasonable reflection of the impact the "price tag gangs" were having on Palestinians. She concluded that there was no evidence that the programme was in breach of the guidelines on impartiality and therefore the appeal did not stand a reasonable prospect of success on this point.

For the reasons set out above, the Trust's Adviser decided that the complainant's appeal did not have a reasonable prospect of success and therefore should not be progressed as an appeal to the Editorial Standards Committee of the BBC Trust.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that he was complaining about the background information provided by the programme concerning the Palestine/Israel conflict. He said that to illustrate his complaint he had cited a number of facts as illustrations, but in each case, while generally conceding the truth of his facts, the Trust's Adviser had found that the wording used in the programme was "duly accurate and duly impartial". He asked how much inaccuracy or distortion was acceptable before crossing the "duly" line.

The complainant said that although each of the complaints he listed was a small point, they were not insignificant – and in fact were considerable in aggregate. In each case the wording used in the programme could have been improved and the combined effect of all the wording that was used was to distort reality. The complainant strongly disagreed with the Complaints Director that “the key question, therefore, was whether the programme gave an accurate and appropriately balanced assessment of the price taggers”. The complainant said that perhaps it did give such an assessment, but that, specifically, was not his complaint.

The complainant reiterated his central concern, which he felt had not been addressed:

“In any documentary programme, and particularly in this one, the programme-makers must have a backdrop on which to project the documentary’s data and argument. My complaint is that the backdrop in this case is taken from the Israeli narrative, not the Palestinian narrative and that results in bias ... lack of impartiality.”

The complainant said he would be grateful if the Trustees could look again at his argument about the backdrop that is used by the BBC when reporting events in Palestine/Israel.

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 was also provided with the programme in question.

The Committee noted the complainant’s concern that the central point of his complaint had not been addressed, and that his allegations of bias were based on his belief that the backdrop used by the BBC when reporting events in Palestine/Israel was taken from the Israeli narrative rather than the Palestinian narrative.

The Committee considered the examples given by the complainant as evidence of alleged bias, and it noted the complainant’s view that although each of the examples he listed was a small point, they were considerable in aggregate. However, the Committee did not conclude “that the programme concentrated on the Israeli narrative, largely neglecting the Palestinian narrative”. The Committee agreed that the responses to the complaint had demonstrated the editorial justification for the content to which the complainant had objected.

With regard to the choice of the Palestinian representative used in the programme and the questioning of the Israeli spokesman, the Committee agreed that these were matters of creative and editorial direction which fell outside the remit of the Trust to consider. The Committee was satisfied, taking into account the subject and nature of the programme, that there was insufficient evidence to suggest that there was a reasonable prospect of it finding that that these choices resulted in a breach of the Editorial Guidelines.

The Committee considered that, in the context of what the programme was about and the likely audience expectation, adequate and appropriate background information had been provided. Having regard to the points raised by the complainant and to the requirements of the Editorial Guidelines, the Committee did not consider there was a reasonable prospect of it finding that viewers had been materially misled. The Committee agreed that, taken individually or in aggregate, the complainant’s points did not indicate that the programme had unduly favoured one viewpoint over another.

The Committee noted that the complainant, with reference to the conclusion of the Trust's Adviser that the programme had been duly accurate and duly impartial, had asked how much inaccuracy or distortion was acceptable before crossing the "duly" line. The Committee was mindful that the term "due" means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee considered that there was no hard and fast line to be drawn and that each item of content should be considered in its specific context. The Committee was satisfied that, taking into account these factors, it was unlikely to conclude that due accuracy and due impartiality had not been achieved in this programme.

The Committee concluded that there was no reasonable prospect of success for the complaint on appeal.

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

“Gaza rocket arsenal problem for Israel”, BBC News

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint regarding alleged bias in an online news article.

The complainant stated:

“In writing an online news article that focuses in detail on the weapons of armed Palestinian groups, including details on names, sources, range (including graphics), in the middle of hostilities without a similar article of the same detail and focusing on Israeli weapons and Palestinian defences against them, constitutes bias by omission. The bias is made more serious by the asymmetric nature of the conflict, the ongoing occupation and siege of Gaza, the concentration of a captive civilian population of Gaza, and the need for Israel to justify its aggression to the wider public.”

He set out the main points of his complaint, summarised below:

1. The article’s original title alluded to it giving details on both Palestinian and Israeli weapons while the article just focused on Palestinian weapons and Israeli rocket defensive weapons. The title was subsequently changed to make the content clear. [The complainant’s point 2 was incorporated here.]
2. There were no articles which went into corresponding detail about Israeli offensive weapons and the consequences of their use. The complainant included casualty figures for various operations and pointed to the disparity in numbers of deaths.
3. Most of the BBC’s reasoning at previous stages of the complaint suggested that Israel’s weapons were well known, so it was not important to discuss them. This was in contrast to the treatment of Palestinian weapons, and the degree of coverage they were given.
4. The BBC had “submitted to the Israeli government agenda and hence engaged in biased reporting” by judging that the “story” in this case was about Palestinian rockets. “This is precisely what the Israeli government and its supporters put forward as ‘the story’ in order to excuse their actions and deflect criticism.”

The complainant included in his appeal letter his previous correspondence with the BBC on this matter, with his additional comments.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser referred to the Editorial Guidelines on impartiality. She considered each of the complainant's appeal points listed above, as well as his correspondence at the various stages of the complaint. Using the numbering set out above, her reasoning was as follows:

1. The Trust's Adviser noted that the BBC News website said the following at stage 1:

"Thank you for your email. This report was never intended to be anything other than a focus on rocket fire. It seems that a link which appeared on our index for a time might have given the impression it also included information about Israel's military capability and we apologise if that has been the case."

In the Trust's Adviser's view, this element of the complaint appeared to have been resolved at this point. She noted that where the BBC accepted a mistake of this nature and apologised, the Trustees would normally consider the matter resolved. She therefore considered this point did not have a reasonable prospect of success and should not be put before Trustees.

2. The Trust's Adviser noted that the complainant considered that there ought to have been a corresponding article that set out, in similar detail, Israeli weapons and the consequences of their use. She noted that the complainant had referred, in earlier correspondence, to a previous finding by the ESC which stated:

"The Committee agreed with the Head of Editorial Standards that, given the subject matter, it was appropriate to consider the issue as a controversial subject as set out in the BBC's Editorial Guidelines, i.e. matters of public policy or political or industrial controversy. As such, the subject matter was required to be treated with due impartiality.

The Committee also agreed with the Head of Editorial Standards that articles on the news website should each in themselves achieve impartiality (unless part of a linked and signposted series) taking into account the nature of the subject of the articles and how the content and approach is signalled. It also noted that website articles are different from broadcast content in that there are related titled links to the side of each article."

The Trust's Adviser agreed that the subject was one which should be treated with due impartiality and that articles on the news website should each in themselves achieve impartiality unless part of a linked or signposted series. She noted, too, that the Head of Compliance for BBC News had stated on 22 December: "...it clearly can't be and isn't the case that each and every article requires a companion piece. Each is treated individually".

The Trust's Adviser agreed with that analysis. She considered the contents of the article and concluded that it was a report about the rockets that were being fired into Israel from Gaza and was intended to give context to the worsening conflict between the two powers – rather than compare and contrast their different military capabilities.

The Trust's Adviser considered the responses the complainant had been given at previous stages of the complaint, the complainant's reference at stage 2 to a previous ESC decision, the content of the website article itself, and other examples of the BBC's coverage of the issue.

The Trust's Adviser noted that on 22 December 2012, BBC News' Head of Compliance had responded:

"Appropriately relevant details were ... in this one, at the very top of the article, where it clearly reiterates a fact which anyone who follows the competing narratives in the Middle East conflict is aware of: the big military imbalance between Israel and the Palestinians:

'The upsurge of fighting between Israel and Hamas has highlighted, once again, the total disparity of force between the two sides. Israeli aircraft and naval units can operate against targets in the Gaza Strip pretty much at will. If there were to be a major ground incursion by Israel – something that probably both sides would want to avoid – the military balance again would be overwhelmingly in Israel's favour'."

The Trust's Adviser noted that the complainant's main point was that the level of detail given in the article about the Palestinian weapons was unmatched elsewhere—either within that particular piece or in other BBC articles—by a similar level of detail about Israeli weapons. The Trust's Adviser considered that the Impartiality Guidelines did not require a similar level of such detail to be provided but, rather, would look at what the news issue was in each particular case and, using wider criteria as set out in the Editorial Guidelines, would look at whether it had been reported with due impartiality. (The complaint about the selection of the "story" itself is dealt with further in the next point.)

The Trust's Adviser considered that, as the reporter had noted at stage 2, this particular piece was about how the Palestinians in Gaza had the capacity to target population centres in Israel, and he had been asked to look "at the Hamas/Islamic Jihad arsenal; what rockets they have and where do they get them".

The Trust's Adviser noted that the following paragraphs set the scene for the piece:

"The upsurge of fighting between Israel and Hamas has highlighted, once again, the total disparity of force between the two sides.

Israeli aircraft and naval units can operate against targets in the Gaza Strip pretty much at will.

If there were to be a major ground incursion by Israel – something that probably both sides would want to avoid – the military balance again would be overwhelmingly in Israel's favour.

Equally though, the fighting has highlighted the pervasive risk posed by the Palestinian rocket arsenal to Israeli citizens living in the southern part of the country.

Palestinian rockets may not be especially sophisticated or accurate.

Nonetheless, they remain a serious threat, as the direct hit on an apartment building in Kiryat Malachi on Thursday morning, which left three dead, demonstrated."

The Trust's Adviser considered that this provided reasonable context for the

information which then followed, and it had been made clear at the beginning of the piece that the Israeli capability was very considerable and the military balance was "overwhelmingly in Israel's favour". She did not think that Trustees would consider that detailed descriptions of Israeli weaponry, their sourcing and so on, were relevant to the matter in hand.

The Trust's Adviser noted that later in the piece a description of the technical ability of the Israeli military operation shone further light into the disparity between the two sides:

"Storage sites for these weapons have been among the specific targets sought out by Israeli aircraft.

Israeli military spokesmen claim to have been remarkably successful in destroying them, though there are reports that at least one Fajr-5 has been fired during the current round of fighting.

Israel's response to the missile threat has been both defensive and offensive in nature. Its relatively new anti-missile system – dubbed Iron Dome – is heavily engaged in the current fighting. This has been operational since 2011. [Details of Iron Dome followed]

The 'mystery' air attack against a consignment of shipping containers outside an Iranian-operated arms factory in Sudan in late October is widely seen as having been carried out by the Israeli Air Force in an attempt to interrupt weapons supplies going to Hamas or other Palestinian groups.

Regular air strikes in the Gaza Strip have targeted individual leaders of some of the smaller Palestinian factions, along with crews getting ready to launch rockets.

But this is the largest Israeli operation since its ground incursion into the northern Gaza Strip in 2008-09.

Inevitably, for all the talk from Israeli spokesmen of 'surgical strikes', Palestinian civilians have been killed.

Civilian casualties, of course, could rise dramatically if the Israelis move towards a ground offensive. All of the pressures point towards an escalation of the fighting before it dies down."

The Trust's Adviser therefore considered this point did not have a reasonable prospect of success and should not proceed to the ESC.

On the complainant's view that BBC stories at other times had not covered the extent of the damage done by Israeli weaponry, the Trust's Adviser noted a number of BBC website items, including the following eyewitness account, also published in November 2012, "Gaza-Israel conflict: on the ground in Gaza City" bbc.co.uk/news/world-middle-east-20367005 which chronicled the fear and destruction resulting from Israeli attacks.

The Trust's Adviser noted that this was in addition to the coverage of Israeli strategy and weaponry during previous Gaza operations, including the use of cluster, phosphorous, and pyrotechnic munitions referred to in the reply from the Head of Editorial Compliance and Accountability at stage 2, and which the

complainant considered were published too long ago to be relevant.

3. The Trust's Adviser's reasoning on this point was related to point 2 above. She noted that the complainant did not accept that Israel's weapons were well known and, even if they were well known, that that meant it was not important to discuss them. She noted he said: "This [the BBC's argument] seems at odds with the degree of public and news discussion about Palestinian weapons and their source compared to Israeli weapons and their sources."

As had already been set out under point 2, the Trust's Adviser considered that attention had been given to the nature of Israel's capabilities, both within the article in question and at other times, but she considered that this was not the "story" at this juncture. Similarly, she thought the Trustees would conclude that the details of Palestinian weapons would not have been well known, and that was precisely why the piece had been commissioned. Therefore she considered the appeal was unlikely to be successful on this point and should not therefore proceed to the ESC.

4. The Trust's Adviser appreciated that the complainant considered the BBC's choice of topic on this occasion meant the BBC had "submitted to the Israeli government agenda and hence engaged in biased reporting".

She noted the rationale for the piece, set out in the stage 2 response, which was "the wider context of the developing, deepening conflict", and as "a news story focused on helping to contextualise the reason behind Israel's military action against Gaza". She considered that Trustees would take into account that context in relation to this particular article, and would therefore be unlikely to consider the choice of topic as evidence of lack of due impartiality.

For all the reasons set out above, the Trust's Adviser decided that the complainant's appeal did not have a reasonable prospect of success and therefore should not be progressed as an appeal to the Editorial Standards Committee of the BBC Trust.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the letter he had received from the Trust's Adviser did not address his main point.

The complainant said the key point the Trustees needed to bear in mind was that the BBC had produced an article which concentrated solely on Palestinian militant weapons and did not have a corresponding article on Israeli weapons. The complainant repeated his view that this necessarily constituted bias.

The complainant said that the BBC's subsequent argument, that "that was the story", rather than making it acceptable, actually deepened the bias.

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 that the Trust's Adviser had not addressed the main point of his complaint, which he said was that: producing an article which

concentrated solely on Palestinian militant weapons without having a corresponding article on Israeli weapons constituted bias.

The Committee noted the response of the Head of Compliance, BBC News, who had addressed this point at an earlier stage: "...it clearly can't be and isn't the case that each and every article requires a companion piece. Each is treated individually."

The Committee considered that the article which was the subject of the complaint was not a report which sought to compare and contrast the different military capabilities of the two powers.

Although the level of detail given about Palestinian weapons was not matched by a similar level of detail about Israeli weapons, the Committee noted that the guidelines on impartiality did not require this. The Committee agreed that the context of the article was a news story focused on helping to contextualise the reason behind Israel's military action against Gaza. As such, the Committee considered that the article could achieve due impartiality without giving a similar level of detail about each side's weapons and the amount of damage inflicted by them. The Committee noted that, while specific detail of Israeli weaponry had not been provided the article had referred to "the total disparity of force between the two sides".

The Committee was mindful that the creative and editorial direction of the BBC is an operational matter for the BBC Executive rather than the Trust. However, Trustees considered that it was reasonable for the BBC to judge that details of Palestinian weapons would not have been well known, and that it was reasonable for this article to have been commissioned on that basis. The Committee did not agree with the complainant that the BBC's decision to produce an article on the subject of Palestinian weapons indicated bias.

The Committee was satisfied that the appeal did not have a reasonable prospect of being upheld as amounting to a breach of the guidelines and it concluded that a complaint of bias would have no reasonable prospect of success on appeal.

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

BBC Breakfast, BBC One, 1 November 2012

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint regarding comments made by a presenter on *BBC Breakfast*.

The comments were made during the presenter's interview with the author of a novel which tells a fictionalised account of the life of Walter Tull. Mr Tull was a former professional footballer who became the first black officer in the British Army and who died in 1918. The interviewee described how Mr Tull had faced a number of challenges during his life: he was brought up in an orphanage and, after becoming one of the first black professional footballers, had suffered racist abuse. In the army he became an officer and was recommended for the Military Cross. However he died before the medal was awarded and never received it. Many decades later, when the Imperial War Museum proposed erecting a statue to him in 1990, the local council refused to grant planning permission.

The author explained that when Mr Tull joined the army in 1914, it was:

"...a time when you couldn't be black and an officer in the British Army, it was against the rules. You had to be of 'pure European descent' was the quote. He was so good at what he did and his officers and his men thought he was so wonderful that almost somehow by accident he became Lieutenant Walter Tull, an officer, the first black officer."

He went on to describe how Lt Tull had not received the medal that had been his due:

"He was recommended for the Military Cross and he never got it. He was killed in 1918 in March, body was never found, and you don't know why he was never given it. I hope we don't know why but you know we have reasons to suspect maybe it was shuffled under a carpet somewhere."

In questioning this, the presenter said, "...the issues that you alluded to there about racism in the army, I mean, it wasn't, in a way it wasn't racism, it's just the way it was then..."; and in a later question about how racism continued to be an issue for modern society, he said:

"I just wonder whether that leaves you slightly weary of heart when you write a story about it from history and you watch, you put your news on and you see things still being played out now."

In his appeal to the Trust, the complainant explained why he found the presenter's comments offensive and why he was dissatisfied with the responses he had received at stages 1 and 2. In summary, the complainant alleged:

- that the "ruling classes" have chosen to ignore or fail to recognise a concept of racism but this does not mean that it did or does not exist
- to claim "It is just the way it is" is to excuse racism

- it is racist to ignore concepts of racism and its manifestations
- the later question in the interview, "...leaves you slightly weary of heart", was motivated by a recognition of the controversial nature of the earlier comment.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success and she did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser said that the complaint engaged the BBC's Editorial Guidelines on Harm And Offence. She considered the context of the comment.

The Trust's Adviser considered that the interviewee had set out very clearly the difficult circumstances in which Mr Tull had grown up and had made it clear that the racism he had suffered had been both personal abuse (as a footballer) and of a kind that was not based on personal animosity, but embedded into the way society worked – that is, he should not have been able to become an officer because he was not of "pure European descent". He also said Mr Tull had "...played for Spurs for one season, was racially abused – which is interesting, just at the moment." The Trust's Adviser considered that this indicated that Mr Tull's story was relevant for today.

The Trust's Adviser considered that the author had indicated his own dismay that the medal had not been awarded to Mr Tull posthumously and suggested "maybe it was shuffled under the carpet somewhere".

The Trust's Adviser noted that the presenter asked:

"And we won't go into detail of the storyline obviously but for your purposes the issues that you alluded to there about racism in the army, I mean, it wasn't, in a way it wasn't racism, it's just the way it WAS then, we look at it as racism now. You were mentioning some of those issues simply do not go away from society..."

She noted the response from the Complaints Director:

"[The presenter] was not for a moment saying that attitudes towards race a century ago were acceptable. I think what he was trying to say was that, unlike today, there was at that time no recognised concept of racism through which such attitudes would be understood. It was 'just the way it was'. The point he was trying to get at, I believe, is that despite the fact that we now have a much clearer understanding of the nature of such attitudes and beliefs, they nevertheless persist."

The Complaints Director said that this explains the follow-up question about whether the author is "weary of heart" when he still sees the same things "being played out".

The Trust's Adviser noted that the complainant had rejected this conclusion. He stated:

"...I do not believe there has ever been such a time, when there was no recognised concept of racism through which such attitudes would be understood. Black people and other right-thinking people have always had a concept of racism

through which such attitudes could and were understood.”

The Trust’s Adviser accepted that the presenter’s comment was not well phrased. She considered that what he had been trying to convey was that the disadvantages Mr Tull faced were entrenched in the way society worked, they were automatic bars to progress and equality – rather than being based on personal animosity as a result of his race. The Trust’s Adviser considered that the fact officers had to be of “pure European descent” was an indication of the way racism was woven into society and she did not consider that the presenter was attempting to deny that. The Trust’s Adviser agreed that people who suffered racism would certainly have had an understanding of the discrimination involved. She said that in the following exchange, the author made it clear that this was racism. He said:

“...I mean it was effectively racism. People were suffering the same sort of thing only it was rarer because there were not so many black people in the UK at the time. I mean what has happened is, they are part of who we are, you know they are part of our culture. And it’s taking so long, such a sad time before we all get that they are part of it and we’re proud to have them part of it. And whether it’s on the football terraces or anywhere else, it’s a lesson we have to go on learning.”

The Trust’s Adviser noted that the exchange continued:

Presenter: I mean I just wonder whether that leaves you slightly weary of heart when you write a story about it from history and you watch, you put your news on and you see things still being played out now.

Author: I don’t really. I think if you’re still in connection, in contact with young people which I am through books, you take great heart from the fact that they are learning all the time, that things are becoming better you know. They have got their eyes wider and their hearts more open with each generation, it just takes time.

The Trust’s Adviser noted the complainant’s view that the follow-up question was an attempt to “recover” the situation.

The Trust’s Adviser considered that the central point of the discussion was the extent to which after 100 years, and despite Britain today being much more multi-cultural, problems of racism persist.

She considered that the resulting question seemed to be whether we should be “weary of heart” or not. The author had provided his own response: that each generation becomes more open-minded.

The Trust’s Adviser concluded that the presenter’s second question made his purpose clear and that the surrounding editorial material would have left viewers in little doubt that the presenter was questioning racist attitudes rather than expressing a racist attitude himself.

The Trust’s Adviser did not consider that there was evidence that the guidelines had been breached and she therefore concluded there was insufficient evidence to suggest that the appeal had a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said he thought the Senior Editorial Strategy Adviser, along with others before her, had missed his point, and he alleged that the BBC was institutionally racist.

The complainant felt that his point that saying "it's just the way it was" is effectively an excuse, was being missed. The complainant said that practising racism because it is the acceptable way of life is not the same as being ignorant as to what racism is. The complainant said it was one thing to think something was acceptable and usual behaviour, and another to be ignorant of the facts. The complainant alleged there was institutional racism within the BBC.

He considered that the fact the Trust's Adviser did not think the complaint should proceed to appeal was "proof of how lightly the BBC takes racism".

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 was also provided with the full transcript and a clip of the item in question.

The Committee agreed that the Editorial Guidelines on Harm and Offence were relevant to this complaint.

The Committee agreed with the Trust's Adviser that the presenter's comment with regard to historical attitudes to race, which it noted had been made in a live broadcast, had not been well phrased in that it was open to potential misinterpretation if taken in isolation. However, the Committee considered that the meaning of the comment was ultimately clear in the context of the interview in which it was made. Considering the overall discussion, the Committee agreed viewers would understand from the comments that the presenter was questioning racist attitudes rather than expressing a racist attitude himself. The Trustees agreed that, in the context of the interview, the audience would not have taken the presenter's suggestion that the situation in the army at the time "wasn't racism" to mean that it was acceptable or excusable. The Committee considered that the presenter's point was about the institutional adoption at that time of attitudes which would now be widely condemned as racist.

Having regard to the Editorial Guidelines on Harm and Offence, the Committee concluded that there was no reasonable prospect of it finding that there had been a breach of the guidelines in this instance.

The Committee noted the complainant's view that the decision not to take this appeal showed that racism was taken lightly by the BBC. The Committee disagreed and was satisfied that the decision whether to take the appeal was based solely on whether it had a reasonable prospect of success. For the reasons given above, the Committee agreed that the complaint in this instance did not have a reasonable prospect of success on appeal.

The Committee considered the points the complainant made to support his allegation that the BBC was institutionally racist. The Committee agreed that it had seen nothing in this or any other appeal to suggest that this was the case and agreed that this allegation did not have a reasonable prospect of success.

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

BBC science programmes

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the BBC Executive not to uphold her complaint regarding BBC science programmes.

The complainant said that BBC science programming was not impartial but clearly favoured the Darwinian theory of evolution over faith-based theories of creation. She said there should be a "level playing field" and that "people have a right to know about creationism as well as evolution".

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser said that the BBC applies due impartiality to all subjects, but its requirements will vary. She explained that the term "due" means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Trust's Adviser further explained that impartiality is often more than a simple matter of "balance" between opposing viewpoints, and does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

The Trust's Adviser noted that an Editorial Executive for BBC Two and BBC Four said that evolution was the theory supported by the overwhelming body of scientists and, like all scientific theories, could be tested. Creationism however was a belief that, unlike scientific theories, was based on faith rather than research and could not be tested. The Editorial Executive's letter stated:

"In science programmes there is no requirement to allocate similar amounts of time to arguments based on faith. This is not to say that intelligent design should never be mentioned but it certainly will not be afforded the same attention as scientific theories will."

The Trust's Adviser noted that a similar point was made by BBC Four's Channel Executive:

"It would be misleading to suggest to our viewers that intelligent design theory or creationism have an equivalent scientific status to the theory of evolution. This does not mean that we would never be interested in showing a programme on BBC Four that made a convincing case against the theory of evolution and offered a credible, evidence-based, scientifically tested alternative. However, I personally have yet to see such a proposal from an established programme-maker."

The Trust's Adviser considered that the responses sent to the complainant had set out the BBC's thinking on this matter. She decided that the appeal did not have a reasonable prospect of success as the BBC's Editorial Guidelines do not require programme makers to treat matters of science and matters of faith as equivalent. Therefore she did not propose to put the appeal before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said that she had been given no indication by the Trust or any other person to whom she had written at the BBC that any of the documentation she had sent had been thoroughly read, or that any of the numerous creation websites she had included in her correspondence had been accessed. She felt a fair decision about her complaint could only be made when the BBC had done this and both sides of the argument had been investigated.

Before a fair decision could be reached, the complainant felt it was only right that the BBC does this, and gives its thoughts on everything studied. She gave a further website, www.creation.com where she said useful articles could be accessed.

The complainant said that she disagreed with the statement of the Trust's Adviser that science can be tested but that is not the case for faith-based beliefs. She said that it was not strictly true and any expert creationist who has dedicated his life to studying creation against evolution thoroughly examines and tests his findings.

The complainant quoted statistics in support of her argument that approximately half the world's population believes in creationism. The complainant therefore believed that the BBC was doing a disservice to the many people who have such beliefs. The complainant thought the BBC should also take into account "that most secular scientists are atheists and therefore find it more acceptable and tolerable to believe in the Big Bang and evolution" rather than believe in a Creator.

The Committee's decision

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

The Committee noted that the complainant was dissatisfied with the responses she had received regarding her complaint, and that she disagreed with the BBC Executive's stated view that, unlike scientific theories such as evolution, faith-based beliefs could not be tested.

The Committee noted that the complainant felt it was only right that the BBC gives its thoughts on all her supporting material. The Committee did not agree that it was necessary for the BBC or Trust to study in great detail either the various scientific origin theories or creationism in order to appreciate the fundamental differences between the two.

The Committee considered whether the complainant's appeal raised a matter of substance. It noted that this ordinarily means that there is sufficient evidence to suggest that the appeal has a reasonable prospect of success. The Committee further noted that it may take account of whether it is proportionate and cost-effective to consider the appeal.

The Committee noted that the complainant had provided a great deal of documentation to support her contention that there was an evidential basis for creationism and intelligent design. The Committee also noted the view set out in the stage 2 response from the BBC Two/BBC Four Editorial Executive who explained that evolution was the theory supported by the overwhelming body of scientists. The Committee had taken similar decisions in December 2008,¹⁴ and July 2010.¹⁵ The Committee was satisfied that there is a scientific consensus in support of evolutionary theory and that it is appropriate for the BBC's science output to reflect that.

The Committee noted the complainant's argument that approximately half the world's population believes in creationism. The Committee considered that this was not relevant to the BBC's position that creationism is a matter of faith and is not required to be treated equally in scientific output. Similarly, the Committee did not consider the complainant's view of the relationship between scientists and religious belief to be relevant to this position.

The Committee agreed that the BBC's Editorial Guidelines on impartiality do not require programme makers to treat matters of science and matters of faith as equivalent in scientific output.

The Committee concluded that the complainant's appeal did not have a reasonable prospect of success.

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

¹⁴

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2008/december.pdf

¹⁵ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/july.pdf

BBC News

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Head of Accountability, BBC News, not to uphold his complaint regarding the absence of BBC coverage of attacks on service personnel assisting during the London Olympics in 2012.

The complainant considered that the BBC should have reported attacks by members of the public on the army, but did not do so. He felt that the BBC's decision not to report attacks on the army during the Olympics was evidence that "neutrality" was not being observed by the BBC.

The complainant also felt that the length of time taken by BBC staff to respond to his complaint was unacceptable.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success and she did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser said that, in general, editorial complaints relate to items which have been broadcast; however, she noted that the Editorial Guidelines on impartiality stated:

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

The Trust's Adviser noted the complainant's contention that the absence of any reporting about attacks on army personnel during the London Olympic Games amounted to bias within the BBC.

The Trust's Adviser said that research into coverage in other media found nothing that was contemporaneous with the incidents cited by the complainant. She noted, however, that there were two newspaper reports in early September 2012, in the *Sun* and the *Telegraph*, about attacks on soldiers during the Olympic Games.

The Trust's Adviser noted that BBC News' Head of Accountability had written to the complainant on 22 December 2012. That letter described how the newspaper coverage related to a "spate of attacks" that had apparently taken place some weeks previously. The letter continued:

"...just in case BBC News – and the rest of the UK's press and media – did miss a major August news story, as you suggest is the case, [the defence correspondent] asked the Ministry of Defence if they had any figures relating to attacks on soldiers during the Olympics. They told her they were not aware of there having been a major problem at all, and, contrary to the 'spate of attacks' reported on September 3 in a newspaper, the MOD knew about two incidents – one verbal harassment

plus spitting, the other the attack in East London reported in the *Telegraph* and the only one serious enough, according to the MOD, to go to court.”

The Trust’s Adviser considered that the Head of Accountability had given a very thorough and reasonable response that explained why the newsroom was not aware of a story which, at face value, had appeared serious when described in the print media. The Trust’s Adviser considered that the BBC’s newsroom had carried out detailed work in response to this complaint and, looking back over the facts of the story, such as they were possible to ascertain, there did not appear to be editorial justification in running the item as a news story many weeks after the incidents referred to had taken place. The Trust’s Adviser considered that the complaint was unlikely to succeed and should not proceed to the Editorial Standards Committee.

The Trust’s Adviser noted that, in his appeal, the complainant had also referred to a more recent attack on a woman in the street which had been reported in some print media but not picked up by the BBC. The Trust’s Adviser explained that the BBC’s Complaints Framework clearly stated that complaints must be made within 30 working days and must be addressed in the first instance by the Executive. In this instance, the complainant did not raise this issue until many months after the incident. Therefore it was not addressed by the BBC and it would not be appropriate therefore for Trustees to consider it. On this point too, the Trust’s Adviser considered the appeal did not stand a reasonable prospect of success and should not be put before Trustees.

The Trust’s Adviser noted the points the complainant had made regarding the delays experienced at stage 2. She noted that the Head of Accountability, BBC News had acknowledged the delay and apologised for it. She explained that where the Executive acknowledges a shortcoming and gives an apology, Trustees generally consider the issue resolved. The Trust’s Adviser therefore decided the appeal did not have a reasonable prospect of success on this point. However, the Trust’s Adviser was sure that Trustees would wish her to add her apologies on their behalf for the delays the complainant experienced. She said she hoped that the complainant’s concerns would be addressed in some measure by the fact that complaints handling is a matter that the Trust keeps under close review. The Complaints Framework was revised in 2012¹⁶ and there will be a “mystery shopping” exercise looking at how the new framework is working later in 2013.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He said that his main objection was that he felt the BBC was presenting the news it thinks he should hear, rather than the news as it stands, leading to a feeling that he was being manipulated and that this was tied in with some sort of bias.

He acknowledged that any journalist has his or her own opinions on news stories, but he did not think these should dictate what is presented, or how it is presented. Regarding the attacks on soldiers at Olympic venues, he said he would have liked to have known more about them; who was involved; why they were perpetrated; whether action was taken, etc.

He said that if the BBC did not wish to present the news in a sensationalist manner, it could have stated (even in the local London news) that expected attacks had not materialised, and that only a few isolated incidents had occurred. Because BBC News did not say that, the complainant gained the impression that the BBC was trying to portray a rose-tinted view of events.

¹⁶ bbc.co.uk/bbctrust/governance/complaints_framework/framework.html

The complainant alleged that far less important items than the attacks which were the subject of his complaint had made it into the news and cited an example.

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's main objection in his appeal was that in deciding not to report on attacks on the army during the Olympics in 2012, the BBC was not observing "neutrality" but was presenting the news it thought he should hear, rather than the news as it stood. This led to him feeling that he was being manipulated and that the BBC was operating a bias by omitting to report on these attacks.

The Committee noted that the BBC's newsroom had carried out detailed work in response to the complaint and had concluded that, looking back over the facts of the story, such as they were possible to ascertain, there did not appear to be editorial justification to run the item as a news story many weeks after the incidents referred to had taken place.

The Committee was satisfied that no evidence had been presented which suggested that a complaint of bias would have a reasonable prospect of success. It agreed that the choice of content in a programme is an operational matter of editorial and creative direction, which is the responsibility of the BBC Executive and not for the Trust. The Committee noted the complainant's view that the attacks should have been covered by the BBC but it did not consider that there was a reasonable prospect that it would find that there had been a breach of Editorial Guidelines on impartiality in this instance.

With regard to the handling of the appeal, the Committee noted that the complainant had received an apology for the delay at stage 2. The Committee agreed with the Trust's Adviser that it was likely to find that this element of the appeal was resolved and therefore would not have a reasonable prospect of being upheld on appeal.

For the above reasons, the Committee concluded that there was no reasonable prospect of success for this complaint on appeal.

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

BBC News

The complainant asked the Editorial Standards Committee (ESC) to review the decision of the Trust Unit 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 following the decision of the Head of Accountability and Editorial Compliance, BBC News, not to uphold his complaint regarding BBC News coverage of Cyprus.

In the view of the complainant, the BBC does not give adequate coverage to the ongoing dispute in Cyprus. The complainant argued that because of the historical ties between the United Kingdom and Cyprus, and the fact that thousands of Cypriots have settled in the United Kingdom, the BBC has an added responsibility to cover the dispute adequately, which the complainant believed it has failed to do.

The complainant included the following points in his appeal:

- On the rare occasions when Cyprus is mentioned, the true facts are not brought to the attention of the viewers or listeners. The complainant cited a *Hard Talk* programme as an example
- The BBC has a responsibility to inform its listeners about what is going on in Cyprus, particularly when one bears in mind the historical ties between the British and Cypriot people
- By ignoring the situation in Cyprus, the BBC is not acting impartially
- When one compares the reporting of the BBC around the world, Cyprus is ignored. The complainant cited examples of points that he thinks should be covered, including the anniversary of the Turkish invasion
- The complainant still has concerns about the Cyprus country profile page, even after it had been amended by the BBC in response to his complaint (e.g. he states that the country profile page should make it clear that the entire Republic of Cyprus is part of the EU but that the EU laws are suspended in the occupied part. He also states that the purpose of the Buffer Zone is to keep the two communities apart)
- The complainant still has concerns about a caption to a photograph which shows Greek Cypriots looking at Varosha's beach because the caption does not mention the enforced expulsion of its citizens.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) responded, recognising that the complainant felt strongly about this matter. The Trust's Adviser explained that when it comes to the editorial content of the BBC, the Trust has a strictly limited role which is set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC. This draws a distinction between the role of the BBC Trust and that of the BBC Executive Board and says that editorial and creative output is a duty of the Executive Board, and is one in which the Trust does not get involved unless,

for example, it relates to a breach of the BBC's editorial standards.

The Trust's Adviser explained that this meant decisions about which stories are covered and how they are covered are matters for the editorial judgement for the BBC and do not fall within the remit of the BBC Trust. The Trust's Adviser explained that she did not consider there to be evidence that the BBC's Editorial Guidelines had been breached. She therefore decided there was no reasonable prospect of success for the complainant's appeal and it was not appropriate that it should proceed to the Trustees for consideration.

Cyprus Profile page

The Trust's Adviser noted that the BBC's Head of Accountability and Compliance had written to the complainant and had indicated a number of amendments that had been made to Cyprus Profile page as a result of the complainant's comments. The Trust's Adviser explained that she considered the follow-up comments made by the complainant – suggesting further additions that might be made to the page – also related to editorial decisions which are matters for the BBC Executive rather than the Trust. Therefore on these points, too, the Trust's Adviser did not consider the complainant's appeal to have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He reiterated that his complaint was about the BBC coverage of the 1974 Turkish invasion of Cyprus and the ongoing situation since then, and the lack of coverage of the anniversary of the invasion.

The complainant referred to the changes that had been made to the Cyprus country profile in response to his complaint and said that these had not been adequate to correct the inaccuracies and bias that he had alleged. In particular, the complainant criticised the decision to delete entirely a reference to the applicability of EU laws and benefits.

The complainant also alleged that a photograph of Greek Cypriots looking at deserted hotels in Turkish-controlled Famagusta had been manipulated to hide Turkish soldiers and a warning sign. The complainant alleged that the situation in Famagusta was completely ignored by the BBC.

The complainant also said that numerous United Nations resolutions calling for the withdrawal of Turkish troops from Cyprus should be included in the Cyprus Profile in order to provide a more accurate picture of the situation.

The Complaints and Appeals Board decision

The Trust's Complaints and Appeals Board was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's email appealing against her decision.

The Panel agreed that news selection was necessarily a subjective process, which varied from day to day according to the news agenda, and that the BBC had acknowledged that not every member of the audience would feel they got it right every time. The Panel also agreed that choices of which events and stories to cover in the BBC's output were editorial and creative decisions which are specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved.

The Panel noted the complainant was still concerned about the amended country profile and alleged that the BBC is in breach of the Impartiality Guidelines.

The Panel noted that the complainant thought that a line about EU laws applying only to the Cypriot community should have been rectified to include more information, as opposed to having been deleted.

The Panel noted that the complainant also thought that the caption to a photograph should have included reference to the town of Famagusta, and asserted that "the ghost town of Famagusta is totally ignored".

The Panel concluded that consideration of this request for an appeal should be undertaken by the Trust's Editorial Standards Committee as it concerns allegations about the accuracy and impartiality of editorial content.

The Editorial Standards Committee decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser, the complainant's letter asking Trustees to review her decision, and the complainant's correspondence at stages 1 and 2.

The Committee noted that the thrust of the complaint was the allegation that the BBC has a policy of "ignoring the 1974 occupation of Cyprus by Turkey" and had not adequately reported on the resulting situation in Cyprus over the years since then.

The Committee agreed that it was for BBC News to decide when and how to include Cyprus in its news output. The Committee agreed that this would be determined largely by the news agenda and it was not a matter in which the Trust should become involved unless it related to a breach of the Editorial Guidelines. The Committee noted that the complainant considered the absence of coverage of Cyprus, and in particular the ongoing Turkish occupation, to be indicative of bias. However, the Committee was satisfied that, provided any coverage given was duly impartial and accurate, it was for BBC News to decide which stories to cover and when. It noted that the Cyprus Profile page provides permanent information on the BBC website about the Turkish occupation.

With regard to the specific issues raised by the complainant regarding the Cyprus Profile page, the Committee was satisfied that the BBC's responses had adequately addressed any deficiencies in the original content. The Committee did not consider that the changes which had been made in response to the complaint indicated that there was a lack of due accuracy or due impartiality in the profile page. The Committee noted the complainant's further concerns about the profile page, but it did not consider that these aspects of the complaint had a reasonable prospect of success. The Committee noted the complainant's allegation that a photograph had been manipulated but it did not consider that there was any evidence to support this claim.

The Committee was, therefore, satisfied that it had seen nothing to suggest that there was a reasonable prospect of it finding that there had been any failure to achieve due impartiality or due accuracy. It agreed that the choice of content is an editorial and creative matter for the BBC Executive and not for the Trust, providing there was no breach of the Editorial Guidelines. The Committee did not consider that there was a reasonable chance that it would find there had been a breach of Editorial Guidelines on impartiality or accuracy in this instance.

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

Decision to cease correspondence at Stage 1

The complaint

The complainant originally complained about BBC Scotland's lack of coverage of record attendance levels at a match between Glasgow Rangers and East Sterling and concerns that BBC Scotland's coverage of Scottish football was biased against Glasgow Rangers. An initial response from the BBC rejected the allegation that the BBC was biased in its sports coverage and said that Rangers developments were reported in a fair and impartial manner.

The complainant then raised several instances which he felt illustrated bias and asked for the reason why the attendance levels were not reported. The BBC responded to say that they were satisfied the relevant Rangers match was well covered by BBC Scotland and that reference was made to "the large Ibrox crowd". BBC Scotland also explained that given a club like Rangers are in the fourth tier of Scottish football it was predictable that they will have big crowds and they did not consider this fact to be worth leading their report. BBC Scotland went on to address the cited examples and explain that in their view there is no basis to the contention that BBC Scotland is biased against Rangers.

Appeal to the Trust

The complainant appealed Audience Services' decision not to uphold his complaint on the following points:

- BBC Scotland's decision not to cover Rangers' record attendance levels
- that, in not covering the record attendance levels, BBC Scotland's staff had shown either bias or incompetence
- that other items the complainant had complained about had been dismissed as "historic complaints" and that a pattern had developed with a slant on reporting that is biased against Rangers
- that comments made by the journalist Jim Traynor about anti-Rangers bias supported his appeal
- that his complaint had been handled poorly.

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) responded, addressing the five points.

On the first point the Trust's Adviser explained that, in her view, BBC Scotland's Sports Editor had provided reasons for the BBC's decision. He made a fair editorial point in explaining that given a club like Rangers are in the fourth tier of Scottish football it was predictable that they will have big crowds and they did not consider this fact to be worth leading their report. She noted that it might be different to viewers outside Scotland who would have less knowledge about Rangers' recent fortunes.

The Trust's Adviser explained that deciding what stories to cover in a news bulletin is a matter of editorial judgement. The direction of the BBC's editorial and creative output is a duty of the Executive Board, and is one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards. She explained that as, in her view, there was no evidence of a breach of the guidelines, she did not consider the complaint to have a reasonable prospect of success and so did not propose to put it before Trustees.

On the second point, alleging bias or incompetence by members of staff at BBC Scotland in not covering this record attendance, the Trust's Adviser expressed her view this, too,

was a reasonable editorial judgement and therefore not evidence of either bias or incompetence. On this point too, the Trust's Adviser did not consider the complaint to have a reasonable prospect of success.

On the third point the Trust's Adviser explained that while the Trust is able to consider complaints of general bias, any finding would be based on evidence from the BBC's output. The Trust's Adviser then addressed the examples cited and, with one exception, referred to previous findings from the Editorial Complaints Unit (ECU) and the Trust on the issues raised. The Trust's Adviser explained that it was her view that it was unlikely the Trust would conclude the examples cited as evidence of bias against Rangers and that she therefore did not propose to put the complaint before Trustees on this point.

On the fourth element of the appeal, the Trust's Adviser explained that the complaints process requires that the Executive must have a chance to respond to complaints in the first instance before they are made to the Trust and the comments made by Mr Traynor had not been raised with the Executive.

On the final issue regarding the handling of the complaint, the Trust's Adviser acknowledged that the complainant's initial complaint had been made on 18 August 2012 but had only been replied to substantively on 2 November 2012 and then after additional emails had been sent. She apologised on behalf of the Trustees for the delay. The Trust's Adviser noted that the BBC had apologised for this delay on 2 November and that in her view Trustees would therefore conclude this issue to have been resolved.

In the view of the Trust's Adviser there was no reasonable prospect of success for this appeal.

Request for review by Trustees

The complainant challenged the Senior Editorial Strategy Adviser's decision.

The Complaints and Appeals Board's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser, the complainant's letter asking the Board to review her decision and also the complainant's previous correspondence with BBC Scotland.

The Panel agreed with the Trust's Adviser that decisions on the degree of prominence to afford a particular story or aspect of a story in the BBC's news coverage was entirely a matter of editorial judgment for the Executive and not the Trust. The Panel also noted that the Executive had provided an explanation for their decision and had rejected the suggestion that the staff involved were biased or incompetent, and commented that it was reasonable for them to say that they could not respond any further on an issue which did not involve any breach of editorial standards. For these reasons, the Panel concluded that this element of the appeal did not have a reasonable prospect of success.

The Panel noted the suggestion that there was a pattern of bias against Rangers in the examples cited by the complainant. The Panel considered that this element of the appeal and the comments made by Mr Traynor should be provided to the Editorial Standards Committee (ESC) as they concerned a complaint about the impartiality of editorial content.

The Panel noted that the Executive had apologised for the delay in providing a substantive response. They considered that this matter was likely to be found to be resolved if it came to the Panel on appeal and that it had no reasonable prospect of success.

The Panel therefore decided that this appeal did not qualify to proceed for consideration, except that it decided in relation to the allegation of general bias that it was for the ESC to decide whether that appeal qualified to proceed.

The Editorial Standards Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser, the complainant's letter asking Trustees to review her decision, and the complainant's correspondence at stage 1.

The Committee noted the above decision of the Complaints and Appeals Board as to the other elements of the request for an appeal, and then turned to consider the matters before it, which concerned the allegation of general bias at stage 1. The Committee noted the previous examples cited by the complainant where BBC Scotland had accepted that mistakes had been made. The Committee agreed that these instances did not lead it to consider that there was a case for the BBC to answer with regard to the allegation of general bias. Given this, the Committee agreed that the complaint repeated complaints which the BBC had already answered and there was therefore no reasonable prospect of success for an appeal against the decision to cease correspondence at stage 1.

With regard to the complainant's reference to comments made by Mr Traynor, the Committee noted that this matter had been first raised in the appeal to the Trust and that this was therefore outside the scope of the BBC's reply at stage 1.

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

Decision to cease correspondence at Stage 1

The complainant appealed the decision at stage 1b of the process that the BBC would not engage in any further correspondence on the same issue.

Appeal

The complainant appealed to the BBC Trust because he was not satisfied with the response received at stage 1b from BBC Audience Services. They stated that they could not engage in any further correspondence about his complaint because they did not consider the points he raised suggested a possible breach of standards and they had nothing further to add to their correspondence.

The complainant alleged it was poor grammar to describe Anglo-Irish as Ireland's "baddest bank". He considered use of this description in a report on Radio 4's *Today* programme to be careless and unacceptable.

The complainant was unhappy that his complaint had been referred to by Audience Services as pertaining to what he "believed" was a display of bad grammar. He felt that Audience Services should have acknowledged it was poor grammar.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) noted that the complainant had first contacted the BBC on 7 February 2013 about the use of the phrase "Ireland's baddest bank" in a news report by the Economics and Business Editor, BBC Northern Ireland. On 12 February 2013, BBC Audience Services responded, acknowledging the strength of the complainant's feelings and apologising for grammatical mistakes where they occurred. The response included a general comment that in live programmes, produced under considerable pressure, occasional mistakes were inevitable although regrettable.

The complainant responded to this on 13 February 2013. He felt the reply failed properly to acknowledge that the phrase "Ireland's baddest bank" was poor grammar and believed it amounted to "spin" and was indicative of "incompetence".

The correspondence was closed down the following day by BBC Complaints on the basis that they had nothing further to add and did not consider the complaint raised an issue which was a potential breach of the Editorial Guidelines.

The Trust's Adviser noted that the Editorial Complaints and Appeals Procedure states that:

At all stages of this Procedure, your complaint may not be investigated if it:
... fails to raise an issue of breach of the Editorial Guidelines.

The Trust's Adviser noted that the complainant's underlying concern was about what he considered to be the use of poor grammar, and he had queried whether the person responsible could not "actually speak English very well".

The Trust's Adviser considered that, literally, the phrase "baddest bank" was bad grammar. However, she explained that the phrase "bad bank" was an economic term for a bank that pooled non-performing assets in one institution – generally underwritten by the state – so that the productive part of the banking system could continue to function. She noted that the report in which the phrase "baddest bank" was used related to emergency legislation that had been passed by the Irish parliament to allow the Anglo-

Irish bank to be put into liquidation; it noted that the debt the Irish Government had taken on to fund the bank's rescue would be replaced with government bonds. The Trust's Adviser considered that the phrase "baddest bank" was a reference to the economic term "bad bank" (meaning a financial institution set up through government intervention to take on loss-making assets) – and the phrase "worst bank", while appearing to be grammatically correct, did not convey the meaning that the Economic and Business Editor, BBC Northern Ireland, had intended.

The Trust's Adviser considered that Trustees would be likely to agree with BBC Audience Services that this was not a matter that could be assessed against the guidelines and therefore it was reasonable for the BBC to have closed down the correspondence. It followed from this that the appeal would not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant challenged the Senior Editorial Strategy Adviser's decision. He repeated his view that calling the Anglo-Irish "Ireland's baddest bank" on air was "appallingly poor". He took issue with the fact that the BBC had not apologised for this.

The Committee's decision

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

The Committee agreed that it was likely that the formulation of words used in the *Today* programme report was deliberate and was intended to convey a specific economic meaning. The Committee agreed with BBC Audience Services that there was no issue raised with regard to the Editorial Guidelines and it would not be proportionate or appropriate for the BBC to continue to correspond with the complainant on this matter. The Committee further considered that the complaint was misconceived and trivial.

The Committee concluded that there was no reasonable prospect of success for an appeal against the BBC's decision to cease correspondence with the complainant on this matter.

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

Six O'Clock News, BBC Radio 4, 15 October 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit 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 Editorial Complaints Unit (ECU) not to uphold his complaint regarding the use of the word "nigger" in a news story broadcast during the *Six O'Clock News* on Radio 4, which he considered offensive and unacceptable for the following reasons:

- The demographics of news listeners differ from those of other scheduled programmes and this should have been taken into consideration. For example, families would have been listening to the 6pm news while having evening meals, and including the word "nigger" was as inappropriate at this time as any expletive or graphic detail involving sex or violence would be. The complainant considered that broadcasting a warning about offensive language did not excuse the use of such language.
- The use of the word "nigger" was prejudicial and selective. The BBC should understand its cultural and political obligation to all sectors of society. The complainant did not think that the BBC would repeat offensive language about Jews, Muslims or those of other religions in a news context. Although the complainant applauded the BBC in exposing society's inequalities, he felt that it had, by the nature of its "insensitive" reporting guidelines, "perpetuated the cultural indifference to racist language that persists in society". He stated that extremely offensive language was only repeated on a news programme when it referred to black and ethnic minority groups – and in particular when those minority groups were composed of predominantly black people.
- The complainant felt that by declining to take up his challenge to provide evidence against the above premise that offensive language was mainly only repeated in news programmes when it referred to black people, the Complaints Director had demonstrated that the BBC was failing to meet the requirements of the Equalities Act and that was tantamount to prejudicial practice and was discriminatory as outlined by the Act.
- The complainant requested that the BBC review and modify its Editorial Guidelines. He considered that racist language was as offensive as strong expletives and should be treated as such. He considered that while some sectors of the black community have re-appropriated the use of the word "nigger", that was not to say that it was acceptable.

The complainant stated that his complaint was not about banning any words, whether racist or expletives, but he considered that more judiciousness and sensitivity should be applied by the BBC when employing offensive language and there should not be a discriminatory cultural bias.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit, and she did not consider that the appeal had a reasonable prospect of success. She

did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser noted the responses given at stages 1 and 2. In particular she noted the news item was in relation to a police officer who was accused of racially abusing a suspect. She noted that in the earlier responses, the BBC had explained that although it was aware of the wide range of people who listened to news programmes during the day, the BBC believed it would be unacceptable to distort or suppress important news stories because of their subject matter. In this instance, the word "nigger" had been integral to the story and a warning was given which the BBC had considered reasonable.

The Trust's Adviser noted that this point had been addressed by the Complaints Director in his letter of 20 December 2012, which stated:

"The report was about a case which rested on the actual words used by the officer, and in which the jury was able to hear evidence of what he had said. The precise language employed was therefore highly relevant, and its inclusion added a great deal to audience understanding of the incident and the court case. There is clearly a significant public interest in allegations of racism in the police force and the actions of the courts in cases such as this. I think therefore that in this instance there was a clear purpose to the inclusion of the language."

The Trust's Adviser agreed with the analysis that there was a strong public interest in the case and therefore a strong editorial justification for the language used. Therefore, she did not consider the appeal stood a reasonable prospect of success on this point and it should not be put before Trustees.

The Trust's Adviser was sympathetic to the complainant's concern that families may have been listening to the 6pm news programme. However, she noted that this point had been addressed by the Complaints Director, who had stated:

"...radio output does not have to comply with the 9pm watershed enforced on television, and regular listeners to Radio 4 (the audience of which typically includes very few children and young people) would expect to hear material of an adult nature. This is particularly the case with news programmes, where stories about current events can and do reflect the realities of the world, often in very frank terms."

The Trust's Adviser agreed with that analysis and considered that on this point too the appeal did not stand a reasonable prospect of success. She noted that the Complaints Director had considered the complaint against the BBC's Editorial Guidelines on Harm and Offence. These do not require that BBC content never causes offence, but state that programme makers must be mindful of audience expectations, and that where there was a risk that some people may be offended, the BBC must:

...be able to demonstrate a clear editorial purpose, taking account of generally accepted standards, and ensure it is clearly signposted.

Also:

...the use of strong language must be editorially justified and appropriately signposted to ensure it meets audience expectations, wherever it appears.

The Trust's Adviser noted that a warning was broadcast before the report stating that it would contain "language which some listeners might find offensive". The basis for the

case against the police officer was explained during the report and the jury had heard the recorded exchange between the officer and the man he had arrested. The racist language used by the officer was part of the case against him.

The Trust's Adviser considered that context was crucial in considering whether it was editorially justified to include offensive language. She considered that, given the significance of the recording in the court case, Trustees would be likely to conclude there was a "clear editorial purpose" in quoting the language. She considered that they would also be likely to conclude it had been "appropriately signposted" in line with the requirements of the Guidelines.

The Trust's Adviser agreed with the Complaints Director that there was a significant public interest in allegations of racism in the police force. She noted that the Complaints Director had accepted that "nigger" was "among the most offensive words" and this was also accepted within the Editorial Guidelines, which state:

Different words cause different degrees of offence in different communities as well as in different parts of the world...

...Strong language is most likely to cause offence when it is used gratuitously and without editorial purpose, and when it includes:

- Sexual swearwords
- Terms of racist or ethnic abuse.

With regard to the complainant's view that it was not necessary to use the word "nigger" in reporting the story, the Trust's Adviser noted the comments of the Complaints Director who explained that although it might have been possible to have reported the story without it, that did not mean there was no editorial purpose in doing so, and the Trust's Adviser agreed with his analysis.

The Trust's Adviser also considered the complaint against the guidelines on Portrayal. These say that BBC content can reflect, but should not perpetuate, the prejudice and disadvantage that exist in society. The Trust's Adviser noted that the Complaints Director had concluded that the manner of the reporting had not done anything to encourage the use of the racist language exposed in court. No impression had been given during the news report that it was acceptable language to use and it was very clear that it had resulted in a serious charge against the police officer who had used it. Therefore, on this point too, she considered the complaint did not have a reasonable prospect of success and should not be put before Trustees.

With regard to the complainant's request for the Complaints Director to provide evidence about the use of offensive language in other output, the Trust's Adviser noted the Complaints Director's view that such research would have no bearing on the question of whether a justification could be articulated for this particular instance of racially offensive language. She agreed with that and considered that on this point the complaint did not have a reasonable prospect of success and should not be put before Trustees.

The Trust's Adviser was sympathetic to the offence caused to the complainant by the wording of the report but did not consider she had seen evidence that suggested the Editorial Guidelines needed amending, and she therefore concluded that on this point too the appeal did not stand a realistic prospect of success and should not be put before Trustees.

Request for review

The complainant requested that Trustees review the decision not to proceed with his appeal.

He said that his substantive allegation with regard to providing evidence of comparative prejudicial use of culturally specific language had not been addressed.

He also felt that using the Editorial Guidelines as the framework for the response was not appropriate because they did not specifically include the word "nigger" as strong language, and he felt this led the BBC to consider any reference to that word as an ineligible complaint.

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 was also provided with the programme in question.

The Committee sympathised with the complainant's reaction to having heard the word he complained about and it understood why he felt as strongly as he did about its use.

The Committee noted that the content of the news report had been signposted for the Radio 4 audience with a warning that it included racially offensive language. The Committee noted that Radio 4 has a remit to provide in-depth news and current affairs programmes. It considered that Radio 4 listeners would not, therefore, expect to be shielded from facts that aided their understanding of the issues being reported.

The Committee noted the complainant's concern that families may have been listening to Radio 4's 6pm news programme. The Committee noted that radio does not have a watershed. It further noted that Radio 4's audience did not typically include a large number of children and young people. The Committee considered that regular listeners of Radio 4 would expect to hear material of an adult nature, and agreed this was especially the case with news programmes.

The Committee noted the Complaints Director had said:

"The report was about a case which rested on the actual words used by the officer, and in which the jury was able to hear evidence of what he had said. The precise language employed was therefore highly relevant, and its inclusion added a great deal to audience understanding of the incident and the court case. There is clearly a significant public interest in allegations of racism in the police force and the actions of the courts in cases such as this. I think therefore that in this instance there was a clear purpose to the inclusion of the language."

In this instance, the Committee considered that the precise language used was integral to listeners' understanding of the report and the issues involved. Bearing in mind the context in which it was used, the Committee considered there was strong evidence to support the use of the word in this case as being editorially justified.

The Committee noted that the complainant felt his request for evidence of comparative prejudicial use of culturally specific language had not been addressed. The Committee noted that the Complaints Director had said to the complainant that such evidence would have no bearing on the question of whether a justification could be articulated for this particular instance of racially offensive language. The Committee agreed that such

analysis was not relevant to the question of whether the use of strong language likely to cause offence was justified in this particular instance. The Committee was mindful that the factors to be taken into account were those set out in the Guidelines, namely, the context, audience expectations and editorial justification. The Committee considered that, in the context of a news broadcast on BBC Radio 4 as part a story to which the use of offensive language was integral (and for which a warning had been given in advance), it would not be likely to find that the Guidelines had been breached.

The Committee noted the complainant's concern that using the Editorial Guidelines as a framework for the BBC response was not appropriate because the Guidelines did not specifically include the word "nigger" as "strong language", which led the complainant to believe that the BBC would consider any reference to that word as an ineligible complaint.

The Committee did not consider this to be the case. It noted that the Guidance issued to accompany the Editorial Guidelines on Harm and Offence includes the statement that the word "nigger" is potentially extremely offensive to audiences:

The strongest language, with the potential to cause most offence, includes terms such as cunt, motherfucker and fuck (which are subject to mandatory referrals to Output Controllers); others such as cocksucker and nigger are also potentially extremely offensive to audiences.

The Committee noted that the Guidance had been approved by the Trust when the Guidelines were revised in 2010. The Committee noted that the Guidelines are revised every five years and this process includes audience research and a public consultation. The Committee noted that the Guidance accompanying the Guidelines can be revised at any time, but it did not consider that there was evidence to suggest that there had been a significant shift in public attitudes such that the Guidance approved in 2010 should be revised. Nevertheless, the Committee agreed that this was an important area which it would expect to be given due consideration at the next revision of the Guidelines.

In conclusion, while Trustees acknowledged that the word complained about in this instance should be treated with due care in BBC output, they decided that this appeal did not have a reasonable prospect of success. Having regard to the Editorial Guidelines on Harm and Offence, the Committee did not consider that there was a reasonable prospect of it finding that there had been a breach of those guidelines in this instance. The Committee was also satisfied that the Editorial Guidelines, in conjunction with the Guidance, provide sufficient safeguards against the unjustified use of language which may potentially be extremely offensive to audiences. Nevertheless, Trustees wished to emphasise that such strong language should be used sparingly, only after careful thought has been given by programme makers to its editorial justification, and that any use must be in line with the Editorial Guidelines.

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

Conspiracy Road Trip: 7/7 Bombings, BBC Three, 1 October 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit 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 Editorial Complaints Unit (ECU) not to uphold his complaint regarding a sequence depicting the making of a bomb by a contributor to the programme, who was an explosives expert, and the bomb's detonation. He considered that the sequence had been faked.

The complainant did not believe the ECU had investigated the matter fully. He said that, whereas the ECU should have viewed and, if possible, released the relevant raw footage (the rushes), the ECU had instead relied on the contributor's statements. The complainant did not consider the contributor's statements to be impartial. The complainant believed that, without access to the rushes, he could not prove his case.

After describing certain shots in detail, the complainant stated that mixing highly concentrated hydrogen peroxide with an organic material at room temperature without any obvious protection seemed very risky, and that there had been documented cases where scientists had died as a result of incorrectly handling hydrogen peroxide. The complainant noted that the contributor was not wearing a protective mask or clothing. The latter, he stated, was strongly recommended when handling hydrogen peroxide. The complainant stated that his suspicion about this element of the programme was raised because of the dangerous nature of what was being depicted.

According to the complainant, the bomb-making sequence contained a shot of a container, marked "water", with a light blue cap and red ring. The complainant stated that the liquid that was seen being poured from an identical-looking container flowed very freely (i.e. more like water than hydrogen peroxide).

According to the complainant, the ECU had suggested that the contributor had referred to two containers of hydrogen peroxide, by which he meant two black-capped containers in the background, and that the contributor had poured liquid from one of those containers.

The complainant said that he had pointed out in correspondence that the black-capped containers were not seen being brought from the background to the foreground, and that they appeared to have blue rings, not red. Furthermore, at the end of the sequence, the black-capped containers were in a plastic bag with their lids on, as they had been at the start. The complainant stated that the only indication that this was anything other than a continuous sequence was a brief shot which included a second red-ringed container that had not previously been seen. According to the complainant, the ECU had suggested that the second red-ringed container, not the container from which liquid was being poured, was the one marked "water".

After quoting from Editorial Guideline 3.4.16 (production techniques), the complainant said that viewers were not made aware of the possible substitution (of water for hydrogen peroxide). He also said that the ECU's suggestion did not explain the inconsistencies with the correct and safe handling of concentrated hydrogen peroxide. The complainant enclosed three images in support of his argument.

With regard to the detonation of the bomb, the complainant noted that the premise of the bomb-making sequence was whether a homemade bomb could have been used in the “7/7” bombings. The complainant also noted that, according to the commentary, the contributor was going to recreate the event from the information available from the inquests into the deaths of the victims of the 7/7 bombings. According to the complainant, the inquest was told that camera flashbulbs could have been used to make an improvised detonator. The contributor had confirmed that a commercial detonator had been used. The ECU had taken the view that this was not misleading, as viewers were not specifically told that a homemade detonator had been used. The complainant believed that viewers should have been informed that the detonator, which he considered an important part of the bomb, would not be homemade or based on information from the inquest.

The Trust Unit’s decision

The Trust’s Senior Editorial Strategy Adviser (the Trust’s Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust’s Adviser considered this appeal against the Editorial Guidelines on Accuracy (section 3).

She explained that the standard of accuracy applicable to the BBC’s output varies according to the nature of that output. For example, an investigative documentary will have a higher requirement for accuracy than, say, a chat show referring to the same subject. In considering whether the programme was duly accurate, the Trust’s Adviser therefore took the following factors into account:

- the subject and nature of the content
- the likely audience expectation
- any signposting that might have influenced that expectation and
- the requirements of the genre or sub-genre.

The Trust’s Adviser noted that, so far as the subject and nature of the content were concerned, the programme presented and examined several conspiracy theories concerning the 7/7 bombings. She noted that it was not a comprehensive investigation into the events of 7/7 but was, rather, an examination of particular theories advocated by four people who doubted the official version of events.

The Trust’s Adviser noted that, with regard to the likely audience expectation, BBC Three’s remit is to bring younger audiences to high quality public service broadcasting through a mixed-genre schedule of innovative UK content featuring new UK talent. The channel’s target audience is 16 to 34 year olds. *Conspiracy Road Trip: 7/7 Bombings* was one of a series of programmes. Other *Conspiracy Road Trip* topics have included 9/11, creationism and UFOs. The series was presented, not by an investigative journalist, but by a stand-up comedian. The Trust’s Adviser considered that this gave a clear indication that the programme was not intended for a specialist audience and she considered that viewers would have been likely to expect the programme to offer factual entertainment for a younger, general (i.e. non-specialist) audience.

With regard to the signposting that might have influenced the audience's expectation, the Trust's Adviser noted that the continuity link to the programme stated:

Now, with some strong language, seven years after the 7/7 bombings, we travel from London to Leeds with a group of disbelievers to reinvestigate the events of that day, in *Conspiracy Road Trip*.

The Trust's Adviser noted that, in his introduction to the programme, the presenter stated: "I'm Andrew Maxwell, a comedian. But in this new series I'm on a serious mission: to explore the world of the conspiracy theorists. Tonight: 7/7."

In the view of the Trust's Adviser, the continuity link and introduction would have been likely to lead viewers to expect not just a reappraisal of the official version of the events of 7/7 but also an exploration of "the world of the conspiracy theorists".

The Trust's adviser said that, in her view, a popular, factual entertainment programme has less exacting requirements in relation to accuracy than has an investigative documentary on the same subject. Whereas the latter genre requires dispassionate, objective and acute analysis, it was, in the view of the Trust's Adviser, appropriate for this programme, which belonged to the former genre, to use ad hoc, informal methods of experimentation.

The Trust's Adviser then considered the points raised on appeal. In her view, the nub of complaint was that it appeared from the broadcast footage that in demonstrating how the ingredients were mixed together to make a bomb, water might have been used in place of hydrogen peroxide for reasons of safety, and that the programme had therefore deceived the audience.

The Trust's Adviser then considered the declared purpose of the bomb-making experiment. She noted that, at the start of the sequence, one of the conspiracy theorists stated: "I don't think that homemade bombs would be able to cause the damage, at the level and weight that were in the rucksacks".

She noted that the presenter then stated:

"Using all the available information from the inquest, [the contributor] is going to replicate the terrible events of the bus bombing in Tavistock Square ... Could a homemade explosive blow up a bus?"

The Trust's Adviser took the view that viewers would have inferred from these comments that the purpose of the experiment was to establish whether or not a homemade bomb was capable of causing the type of damage that was done to the bus in Tavistock Square on 7/7. She noted that in his response of 13 February 2013 the Complaints Director had stated:

"It seems to me that the precise details of how the bomb was produced were somewhat secondary to proving (or disproving) the concept that the bombers could, in theory, have made a homemade bomb and caused the kind of devastation which occurred on 7/7. The programme was appropriately vague about how such a bomb might be put together, for obvious reasons, but I have discussed the manner in which it was produced with the explosives expert who made it, Dr Sidney Alford. He has assured me that the main explosive charge consisted of a mixture of hydrogen peroxide solution and black pepper, as described in the programme... He has assured me that water was not used in the preparation of this bomb."

The Trust's Adviser agreed with the Complaints Director that giving an account of the precise details of how the bomb was produced was subsidiary to the purpose of the programme.

Furthermore, in the opinion of the Trust's Adviser, there were compelling public policy considerations which meant that it would have been inappropriate for the programme to have offered viewers an accurate demonstration of how to make a viable homemade bomb. The Adviser noted that the contributor had implicitly acknowledged this, when he stated: "I'm not telling you what the concentration of peroxide is."

In this regard, the Trust's Adviser also noted that a witness at the 7/7 inquest had refrained from stating on record the concentration of hydrogen peroxide that was required to make a bomb.

The Trust's Adviser concluded that, for reasons of public policy, even if the depiction of the making of a homemade bomb had been incomplete, inaccurate and/or misleading in some material respect, this would not necessarily have amounted to a breach of the requirement for "due" accuracy. It seemed to her that the crucial question in relation to accuracy was not whether the depiction of the bomb-making method was accurate in all respects, but whether the bomb-making method corresponded to that of the 7/7 bombs and, if so, whether it was capable of causing, and did cause, the explosion that was depicted.

The Trust's Adviser noted that the 7/7 inquest had been told that the bulk explosive was effectively made up from concentrated hydrogen peroxide and a pepper/piperine mix (piperine being the alkaloid responsible for the pungency of pepper), and that this was accepted in the Coroner's "Rule 43 report".

The Trust's Adviser also noted that the contributor had assured the ECU that the main explosive charge had consisted of a mixture of hydrogen peroxide solution and black pepper, and that he had given the ECU details of the quantities involved and an explanation of how the bomb was prepared. The Trust's Adviser then considered whether the complainant had provided any evidence to contradict the contributor's assertions.

The Trust's Adviser noted that the complainant attributed great significance to the presence on the workbench of a container marked "water". The Trust's Adviser also noted that the contributor had confirmed to the ECU that he invariably had at least two bottles of water at hand when using concentrated solutions of hydrogen peroxide, in case the solution came into contact with skin or eyes. This seemed to her to be a reasonable explanation for the presence of the container marked "water". She also noted that the contributor had assured the ECU that water was not used in the preparation of the bomb.

The Trust's Adviser noted that the complainant had pointed out that the contributor had not worn a protective mask or clothing when combining hydrogen peroxide solution with organic material. As the Trust's Adviser understood it, the point of complaint was not that the alleged failure to take appropriate health and safety precautions could potentially have encouraged dangerous imitative behaviour, but rather that it suggested that the liquid in question was not in fact hydrogen peroxide.

The Trust's Adviser noted that BBC Audience Services had responded to this point on 6 December and stated:

"To the best of our knowledge on this subject it is strongly recommended that people handling hydrogen peroxide wear goggles and gloves – which Sidney Alford

does in the programme, but it must be remembered that we were present to film the experiments as they take place and were not there to advise on health and safety precautions...”.

The Trust’s Adviser said that, even if it were accepted that it is advisable to wear a protective mask and clothing when combining hydrogen peroxide solution with organic material, it did not follow that it is always necessary to do so. The Trust’s Adviser noted that the contributor had worn safety glasses and rubber gloves, and she did not agree that he had been “without any obvious protection”, as the complainant had alleged. In her opinion, the fact that the contributor had not also worn a protective mask or clothing was not evidence that the bomb had not been made as represented.

Next, the Trust’s Adviser considered the point of complaint concerning the viscosity of the liquid that was poured into the pepper. The Trust’s Adviser noted that the viscosity of hydrogen peroxide solution varies according to its concentration and temperature. She noted that the ECU Complaints Director’s further response of 25 February 2013 had addressed this point and had stated:

“You have questioned the viscosity of the liquid poured into the pepper. Bearing in mind that the viscosity of hydrogen peroxide solution changes at different temperatures and it is only ‘slightly more viscous than water’, I do not consider your claim to be reliable or persuasive.”

The Trust’s Adviser agreed with that analysis.

The Trust’s Adviser then considered the point of complaint concerning the identity of the container from which liquid was poured. She shared the ECU’s view that, when the contributor gestured with his left hand and stated “in these two containers I have hydrogen peroxide”, he was indicating the two black-capped containers that were out of shot.

With regard to the colour of the rings on the black-capped bottles, the Trust’s Adviser shared the ECU’s view that the screenshot supplied by the complainant was inconclusive as to whether or not they were blue. In the Trust’s Adviser’s view, it was possible that the black-capped containers had red rings.

The Trust’s Adviser agreed with the ECU that the fact that the black-capped containers were in the same place at both the beginning and the end of the sequence did not exclude the possibility that they had been used and replaced.

For these reasons, the Trust’s Adviser concluded that the red-ringed container from which the liquid was poured might have been one of the black-capped containers (which, according to the contributor, contained hydrogen peroxide), and that the complainant had provided no persuasive evidence that it was not.

For all these reasons, the Trust’s Adviser concluded that there was no evidence that would cause her to doubt the veracity of any of the statements that the contributor had made to the ECU. She noted that the complainant had provided no evidence to support the very serious allegation that the contributor’s statements to the ECU were “hardly impartial”.

Next, the Trust’s Adviser considered the point of complaint concerning Editorial Guideline 3.4.16. The Adviser noted the complainant’s contention that the only indication that this was anything other than a continuous sequence was the shot that included the two red-ringed containers. She also noted that guideline 3.4.16 does not require that sequences

be shot continuously:

It is normally acceptable to use techniques that augment content in a simple and straightforward way, for example by improving clarity and flow or making content more engaging. This may include craft skills such as some cutaway shots, set-up shots to establish interviewees and asking contributors to repeat insignificant actions or perform an everyday activity.

While there was evidently an elision of the interval between the shot that included the two red-ringed containers and the shot that preceded it, the Trust's Adviser considered that this served to improve the flow of the sequence, as the guideline permitted.

The Trust's Adviser noted that, as the complainant had pointed out, guideline 3.4.16 also states:

For news and factual content, unless clearly signalled to the audience or using reconstructions, we should not normally: ...

- inter-cut shots and sequences to suggest they were happening at the same time, if the resulting juxtaposition of material leads to a misleading impression of events.

In the view of the Trust's Adviser, there was no evidence to suggest that the shot that included the two red-ringed containers had not been recorded at the same time as the rest of the bomb-making experiment. The Trust's Adviser concluded she had seen no evidence that there had been inter-cutting of shots and sequences and it followed from that that she did not consider there was evidence that the audience had been misled and did not consider the appeal stood a reasonable prospect of success on this point.

Next, the Trust's Adviser considered the point of complaint that a commercial electric detonator, rather than an improvised one, had been used to initiate the detonation of the bomb. The Trust's Adviser noted the complainant's contentions that the detonator was an important part of the bomb and that viewers should have been informed that it was not homemade and that this information had not emerged at the 7/7 Inquest.

The Trust's Adviser noted that this had already been addressed by the Complaints Director, who had stated:

"The method used to set off the bomb was not raised in the explanation given in the programme and so I fail to see how viewers could have been misled regardless of whether or not the detonator was homemade. Having said that, Dr Alford has confirmed that he used a commercial electric detonator to initiate the explosion. He told me it would have been a relatively simple matter to create a homemade detonator but a commercial one was used to ensure a safe initiation and allow precise control over the timing of the explosion to assist the programme makers."

The Trust's Adviser considered that was a full and reasonable response to the complainant's concerns. It appeared to the Trust's Adviser that the crucial question under this point of complaint was whether or not the choice of detonator was relevant to the declared purpose of the experiment and, if so, whether its non-disclosure had given viewers a misleading impression.

The Trust's Adviser repeated her conclusion that the declared purpose of the experiment was to establish whether or not a homemade bomb was capable of causing the type of

damage that was done to the bus in Tavistock Square on 7/7. She said that the choice of detonator was potentially relevant to the experiment's declared purpose (and, hence, the non-disclosure of the use of a commercial detonator was potentially misleading) if, and only if:

- an improvised detonator could not have in fact detonated the bomb or
- the choice of detonator would have made a material difference to the nature and/or extent of the damage that such a bomb was capable of causing.

The Trust's Adviser said it was generally agreed that an improvised detonator could indeed detonate such a bomb. She noted that it was stated in evidence to the 7/7 Inquest that a detonator found at the flat used by the bombers was made from twin-core speaker wire, an adapted halogen light bulb, masking tape, silver foil and HMTD explosive. The Trust's Adviser also noted that the Coroner stated in her "Rule 43 report" that forensic investigators had concluded that:

"... each of the bombs consisted of several kilograms of high explosive containing a mixture of pepper and hydrogen peroxide, initiated by an improvised electric detonator containing HMTD (a primary high explosive compound made using hydrogen peroxide)."

It therefore appeared to the Trust's Adviser that, although flashbulbs had not been used as detonators in the 7/7 bombings (as the complainant had implied), improvised detonators had been used.

As to the second bullet point, the Trust's Adviser noted that the complainant had provided no evidence that the choice of detonator would have had any material effect on the damage caused by the homemade bomb.

For these reasons, the Trust's Adviser did not agree that the choice of detonator was relevant to the declared purpose of the experiment or, consequently, that the non-disclosure of the use of a commercial detonator was misleading. Therefore on this point too, she considered there was no realistic prospect of success and the complaint should not be put before Trustees.

The Trust's Adviser considered the complainant's request that the rushes should be disclosed. She noted that the Freedom of Information Act 2000 applies to the BBC "in respect of information held for purposes other than those of journalism, art or literature". Consequently, she said the Trust took the view that the Act does not apply to material held for the purposes of creating the BBC's output, or to material which supports and is closely associated with the BBC's creative activities. The Trust's Adviser concluded that there was no requirement to release the rushes. Furthermore, she noted that paragraph 5.10 of the BBC's Editorial Complaints and Appeals Procedures permitted the Trust to take into account (in fairness to the interests of all licence fee payers in general) whether it was appropriate, proportionate and cost-effective to consider the appeal. In the Trust's Adviser's view, the potential evidential value of the rushes was such that it was neither appropriate, proportionate nor cost-effective for the programme makers to be required to disclose them to the Trust for investigation or to the complainant.

For the reasons discussed above, the Trust's Adviser concluded that this appeal had not raised a matter of substance. In particular, she did not consider that there was sufficient evidence to suggest that the appeal had a reasonable prospect of success, or that it was appropriate, proportionate or cost-effective for the Trustees to consider this appeal.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with his appeal. He said that he had made a complaint about a serious deception which should be fully investigated.

The complainant said that he had presented clear evidence that the BBC faked the construction of the bomb and he had not received a response which disproved his allegation. He said that the BBC had relied on supposition and the word of Dr Sidney Alford whom the BBC considers to be impartial.

The complainant considered that the Trust's Adviser had presented a case stating that the faking of the construction of the bomb would be within the Editorial Guidelines on "due accuracy".

The complainant stated that the Trust's Adviser had presented four points to justify this position:

1. The Presenter was a comedian.
2. The programme was examining conspiracies surrounding 7/7.
3. The programme was targeted at a young audience. 16-34 years old.
4. The programme was not aimed at a specialist audience.

The complainant replied to the above points as follows:

"Point 1: The presenter said he was on a serious mission. Plus the segment dealing with the construction, placing and detonation of the bomb featured Dr Sidney Alford who was not portrayed as a comedian.

Point 2: The creation of the bomb and placing on the bus and alleged use to blow up the bus was presented as an accurate reconstruction. No indication was given that this was a simulation or in any way 'fake'.

Point 3: The target audience were adults and not children.

Point 4: The fact that the target audience was not specialist and so less likely to spot any faking is more reason that all fake or simulated elements should be highlighted."

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 was also provided with the programme in question.

The Committee noted the complainant's allegation that the BBC had faked the construction of a bomb and its subsequent detonation, and that the audience had therefore been misled with regard to the accuracy of the reconstruction.

The Committee noted the responses that the ECU and the Trust's Adviser had given to the complainant. The Committee agreed with the characterisation of the programme as being factual entertainment for a younger, general (i.e. non-specialist) audience, rather than a comprehensive investigation into the events of 7/7. The Committee agreed that the requirements for due accuracy should be considered in such a context.

The Committee noted the complainant's argument that the fact the programme was aimed at a non-specialist audience meant that all "fake or simulated elements should be highlighted". The Committee did not agree with this view and considered that, providing the audience is not materially misled, the requirements of due accuracy in non-specialist output are less stringent than they might be in, for example, news and current affairs output. The Committee did not accept that there was sufficient evidence to conclude that there had been a deliberate intention to mislead viewers in this programme.

The Committee noted the complainant's view that the responses he had received had not disproved his allegations. The Committee was mindful, however, that in determining whether or not an appeal qualified for consideration by the Trustees, the correct test was whether the appeal raises a matter of substance which will ordinarily mean that there is a reasonable prospect that the appeal will be upheld as amounting to a breach of the Editorial Guidelines. The Committee considered that the responses the complainant had received were sufficient to demonstrate that there was no reasonable prospect that the complaint would be upheld if considered on appeal. The Committee noted that the complainant had alleged that the BBC responses relied on supposition and the contributor's statements which the complainant said were "hardly impartial". However, the Committee agreed they had seen no evidence to suggest there had been a breach of the Editorial Guidelines in relation to this point. The Committee did not agree that the examples which the complainant had provided in support of his allegation that the BBC had faked the construction of a bomb and its subsequent detonation, and that the audience had therefore been misled with regard to the accuracy of the reconstruction, constituted sufficient evidence to justify an in-depth investigation in order to substantiate such claims.

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

Today, BBC Radio 4, 17 October 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit 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 Editorial Complaints Unit (ECU) not to uphold her complaint regarding a report on Radio 4's *Today* programme about the proposal to accord university status to a college in the occupied West Bank which included a reference to Jerusalem as an "Israeli city".

The complainant said it was immaterial that the principal subject of the report was not Jerusalem and stated:

"My point was stark and simple: Kevin Connolly should not have referred to Jerusalem as an Israeli city. He knows only too well that Jerusalem has a Palestinian identity as well as an Israeli one. I have never come across an instance of a BBC reporter saying 'in Palestinian cities like Jerusalem'."

The complainant noted the ECU's statement that the report "might perhaps have been worded more clearly", and instead asserted that "it should have been worded more clearly". She did not accept the ECU's argument that in the context of the report the audience would not have assigned much weight to such a slight reference to Jerusalem. In her view it was "sloppy journalism". She stated:

"In my experience the general public is thoroughly confused about the situation in Palestine/Israel and rely on the BBC for clarity and precision. Licence fee payers deserve nothing less. Each single passing mention is one tiny piece of the jigsaw helping to build up listeners' understanding."

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that she did not consider that the appeal had a reasonable prospect of success. She did not propose to proceed in putting the appeal to the Editorial Standards Committee of the Trust.

The Trust's Adviser noted that the relevant section of the commentary stated: "In Israeli cities with better established academic institutions like Jerusalem almost every aspect of this is controversial".

The Trust's Adviser considered that the requirement for content to be duly accurate was relevant to the complaint. She noted the Editorial Guidelines on accuracy stated:

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.

The Trust's Adviser noted the comment was made during an item that was wholly about a controversy over the proposal to award university status to an Israeli-run college in occupied territory. She noted this point had been addressed in the Complaints Director's letter of 5 March 2013, which stated:

“This report was not about Jerusalem, but about plans for a University in an Israeli settlement. The reporter referred in passing to Israeli cities with better established academic institutions ‘like Jerusalem’ where plans for the new University were considered controversial. [...] I do not agree with you that listeners would have been misled by a single passing mention of the city. While this might perhaps have been worded more clearly, I think it unlikely that the audience would have assigned much weight to such a slight reference to Jerusalem, in the context of it containing established academic institutions.”

The Trust’s Adviser noted that regardless of the status of Jerusalem in international law and the lack of external recognition for Israel’s claim of sovereignty over the whole of Jerusalem, Israel nevertheless currently has de facto control over the entire city in a political, administrative and military sense. She also noted that Jerusalem was administered as a single entity by the Jerusalem municipal authority and that there were no physical divisions in the city. While the Trust’s Adviser acknowledged the Palestinian claim over the eastern side of Jerusalem, she said that there was at present no Palestinian control exercised over any part of Jerusalem.

The Trust’s Adviser then considered the complainant’s assertion that the statement ignored the city’s Palestinian identity. She considered that in the context of a report about controversial Israeli plans to create a university in occupied territory, Trustees would conclude the reference to Jerusalem was duly accurate. Therefore it did not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant requested that Trustees review the decision not to proceed with her appeal. She disagreed with the Senior Editorial Strategy Adviser’s decision and alleged that the BBC is institutionally biased in favour of Israel.

The complainant asked on what grounds the BBC sets itself apart from the international consensus with regard to Israel’s sovereignty over Jerusalem. The complainant said that, although Jerusalem is administered as a single entity by the Jerusalem municipal authority, that does not make Jerusalem an Israeli city.

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 was also provided with the programme in question.

The Committee noted the complainant’s argument that the reference to Jerusalem as an Israeli city was inaccurate. The Committee acknowledged the Palestinian claim over the eastern side of Jerusalem, and agreed that the brief reference made to Jerusalem did not illustrate the complexity of the city’s status under international law.

The Committee noted the Guideline requirement for “due accuracy” means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted that this was an item wholly about controversial Israeli plans to give an Israeli-run college in occupied territory a university status.

While the Committee considered that the report could have been worded more clearly, the Committee concluded that, in the context of this report, there was no reasonable prospect of this complaint being upheld on appeal as a breach of the Editorial Guidelines.

The Committee noted that the complainant alleged in her challenge to the Trust's Adviser's decision not to proceed with the appeal that the BBC was institutionally biased in favour of Israel. The Committee noted that the BBC has 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 single group is unfairly represented, and these responsibilities are reflected in the BBC's Editorial Guidelines. The Committee agreed that they had seen no evidence to substantiate the allegation that the BBC was biased "pro-Israel", and it did not consider that this complaint had a reasonable prospect of success.

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

BBC Scotland decision to drop an investigation

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

The complaint

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint regarding BBC Scotland's decision not to proceed with a news investigation.

The complainant alleged that BBC Scotland had dropped a project to investigate allegations concerning child sex abuse after members of the production team were allegedly threatened with dismissal.

The BBC's Head of Editorial Compliance and Accountability for News conducted an internal investigation and concluded that she was confident that there were no grounds to accept the complainant's allegations. In a letter to the complainant explaining the outcome of her investigations, the Head of Editorial Compliance and Accountability included a written statement from one of the journalists involved which set out the reasons why he did not pursue his initial enquiries and confirmed that the decision not to proceed with the provisionally commissioned programmes was his decision alone. She also quoted from written statements by other journalists involved in the original commissions who confirmed that: no pressure had been applied to them to drop the story; they had not applied any pressure to other members of the team; and the decision not to proceed with the project had been taken for appropriate editorial and legal reasons.

In a follow-up email to the complainant, the Head of Editorial Compliance and Accountability explained that she respected the editorial judgement of the journalists concerned in the BBC Scotland programme. She felt that if the journalists involved were unable to stand up a story, and thus could not proceed to production, and they persisted to this day in that view for what appeared to her to be sound journalistic reason, she respected their editorial judgement and did not propose to respond to further emails on the subject from the complainant.

Appeal to Trust

The complainant appealed to the Trust against the Head of Compliance and Accountability's decision and made further allegations about the characters of some of the journalists involved.

The complainant said that the Head of Compliance and Accountability had based her decision largely on unsatisfactory research, a very selective piece from a Police Complaints Commissioner for Scotland (PCCS) report, and uncorroborated evidence from one of the journalists involved whose word the complainant alleged could not be relied upon.

The complainant did not feel that the stage 2 response was a fully considered and balanced judgement in the public interest. He felt that the Head of Compliance and Accountability, BBC News, had not conducted the investigation into his complaint in a manner that was sufficiently thorough, balanced or impartial. He also felt that she had chosen to ignore another investigation conducted by a BBC television programme in 2010. The complainant suggested that a "mitigating factor" in her decision might be that she

was not in possession of all the key documents relating to the case, including the full PCCS report.

The Trust Unit's decision

The Trust's Senior Editorial Strategy Adviser (the Trust's Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit, and she did not consider that the appeal had a reasonable prospect of success. She did not therefore propose to proceed in putting the appeal to Trustees.

The key reasons for her decision are summarised below under the main points of the appeal.

BBC Scotland's decision to drop the programme

With regard to BBC Scotland's decision to drop the programme, although the complainant alleged that it was dropped because members of the production team were threatened with dismissal, and he referred to numerous phone calls he had had with one of the journalists, he did not provide any notes on these.

The journalists involved in the research for the programme had all confirmed that no pressure was applied to them. Rather, they maintained that the story was dropped for legal and editorial reasons (these reasons being that they either felt there was a legal risk with running a story when the allegations could not be proved, or they did not believe in the truth of the allegations following subsequent conversations with the source of the allegations).

The Trust's Adviser was of the view that insufficient evidence had been submitted to support the allegations that the programme was dropped as a result of staff being threatened with dismissal. Accordingly, the Trust's Adviser's view was that this aspect of the appeal did not stand a reasonable prospect of success.

Allegations against a journalist

The Trust's Adviser considered the allegations made by the complainant against one of the journalists involved but was of the view that no evidence had been submitted to support the complainant's allegations and, accordingly, she considered that this aspect of the appeal did not stand a reasonable prospect of success.

Objections regarding the response from the Head of Editorial Compliance and Accountability, BBC News

The Trust's Adviser noted the complainant's concerns that the Head of Editorial Compliance and Accountability, may not have read all the supplementary documentation he had provided to the BBC, and further noted that the Head of Editorial Compliance and Accountability had neither confirmed nor denied that she had read it. However, the Trust's Adviser was confident that the Head of Editorial Compliance and Accountability had addressed the substantive issues of the complaint. The Trust's Adviser noted that the BBC journalists involved in the case had all confirmed that they were not under pressure to drop the project.

The Trust's Adviser believed that the Trustees would be of the view that the Head of Compliance and Accountability had provided a reasoned and reasonable response about the Executive's editorial decision to drop the programmes. She concluded that this aspect

of the appeal did not stand a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He referred to the Head of Compliance and Accountability's assessment as being unbalanced. He asked the Trust to confirm that it was in receipt of all of the information provided by him to the BBC. The complainant also repeated his allegations concerning the character of one of the journalists, whom he said had deceived the Head of Editorial Compliance and Accountability for BBC News. The complainant said that the basis for the journalists' concerns regarding the reliability of the source of the allegations to be investigated was inaccurate and irrelevant.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust (including all attachments), the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Committee to review her decision. The complainant's full correspondence was available to the Committee on request.

The Committee noted the complainant's concerns that the decision not to proceed with his appeal had been based on inaccurate information given by the programme makers, and confirmed that as far as they could ascertain, the Trust Unit was in receipt of all the information provided by the complainant to the BBC.

The Committee was satisfied that the information it had been provided with was sufficient for it to come to a decision on the admissibility of this appeal. The Committee noted that the relevant test was whether the complainant's appeal raised a matter of substance, and this involved considering whether the appeal had a reasonable prospect of success.

The Trustees agreed that there had been a thorough investigation by the Head of Editorial Compliance and Accountability into the complaint, and they had not seen anything to suggest that that investigation was unbalanced as the complainant had alleged.

The Committee was mindful that in the absence of a breach of the Editorial Guidelines, the choice of commissioned programmes relates to the direction of the editorial and creative output of the BBC, which is a matter for the BBC Executive and not for the Trust, as set out in the BBC's Royal Charter. The Committee considered the points made by the complainant in his appeal, and found there was insufficient evidence to support the complainant's allegations. It concluded that there was insufficient evidence to suggest that BBC Scotland's decision not to proceed with the investigation had been taken for improper reasons or that the Editorial Guidelines had been breached. It did not therefore consider that the complainant's appeal had a reasonable prospect of success.

The Committee noted that in his challenge to the Trust's Adviser's decision, the complainant had made a new allegation about BBC staff. The Committee noted that this was a new complaint which had not previously been made, and which could not therefore be considered by the Committee as part of its review of the Trust Unit's decision not to proceed with this appeal.

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