

# Editorial Standards Findings

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

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<b>Remit of the Editorial Standards Committee</b>	<b>1</b>
<b>Summaries of findings</b>	<b>3</b>
<b>Appeal Findings</b>	<b>7</b>
BBC News Channel & BBC World News, 14 & 15 November 2012	7
Health Check, BBC World Service, 4 October 2012	15
Network announcements for BBC TV programmes broadcast in Scotland	27
Margaret Thatcher: The Authorised Biography, BBC Radio 4, 2 May 2013	31
Newsnight, BBC Two, 23 January 2013	36
<b>Rejected Appeals</b>	<b>39</b>
Today Programme, Radio 4, 23 May 2013	39
‘Court Declares James Duff ‘vexatious litigant’’, BBC News Online, 13 June 2013	45
Pop! The Science of Bubbles, BBC Four, 9 April 2013	49
‘Why weight gain in middle age is not inevitable’, BBC News Online, 24 August 2013	53
1700 News Bulletin, Radio 4, 18 July 2013	57
The Nolan Show, BBC One Northern Ireland, 5 June 2013 & The Nolan Show, BBC Radio Ulster, 6 June 2013	61
Decision of BBC Audience Services not to respond further to complaint about allegations of factual inaccuracy and bias in emails from BBC Online Middle East Editor	66

**In order to provide clarity for the BBC and licence fee payers it is the Trust’s policy to describe fully the content that is subject to complaints and appeals. Some of the language and descriptions used in this bulletin may therefore cause offence.**

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

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

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<sup>1</sup>

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

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

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

offensive language if the complainant refuses to reword it after being invited to do so.

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](http://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

## **BBC News Channel & BBC World News: five items, 14-15 November 2012**

The complainant claimed that the BBC News Channel and BBC World News introduced studio guest Jonathan Sacerdoti as a 'neutral-sounding' analyst, whereas the complainant alleged he was a pro-Israel campaigner, and that this resulted in a breach of the BBC's guidelines on Impartiality.

The Committee concluded:

- that its duty was not to assess the interviewee's professional abilities as a commentator but instead to ascertain whether the BBC was required to make it clear to viewers that he was associated with a particular viewpoint.
- that it appeared to the Committee, from his involvement with various organisations and such organisations' published purposes, that the interviewee was associated with a particular viewpoint.
- that whilst the interviewee's views emerged during his contribution sufficiently for a knowledgeable listener to have identified his viewpoint the Committee could not conclude that audiences would have generally been able to deduce that he spoke from a particular viewpoint.
- that the interviewee was introduced without sufficient context. The BBC had not made clear to the audience that the interviewee was associated with a particular viewpoint and this had resulted in a breach of Impartiality guideline 4.4.14.
- that all of the News Channel's interviewees were introduced in a similar fashion: by their name, title and the name of the organisation they represented; it found no evidence that contributors were introduced differently depending on their political perspective.
- that there was no requirement to balance the interviewee's comments with an accompanying guest holding an alternative viewpoint.

The complaint was partly upheld with regard to Impartiality.

For the finding in full see pages 7 to 14.

## **Health Check, BBC World Service, 4 October 2012**

The complainant alleged that an item on the crisis in renal dialysis in Gaza contained a number of inaccuracies and that by omitting to mention administrative problems within Gaza itself the item left the impression that the blockade of the territory by Israel is wholly to blame. The complainant also alleged that a correction following an earlier upholding of one aspect of his complaint had not been sufficient.

The Committee concluded:

- that the wording used in the summary of the ECU finding could be understood to mean that the Israeli blockade had covered drugs and disposables at some period.
- that the summary was not duly accurate in this regard and that the wording should be referred back to the ECU with a request that it be amended.
- that six months was too long a period to wait for a correction of the item to appear online.
- that even though there was an acknowledgement of the ECU's finding on the *Health Check* website, it was not sufficiently prominent and it was possible that a listener would hear the item without being aware of the factual error. The correction should also be reflected on all BBC webpages on which the content in question was available.
- that listeners would be aware that there are many ways in which conditions are difficult for those living in Gaza, and that this was due to a variety of reasons, not solely the blockade; and that it was not a breach of either the accuracy or impartiality guidelines that further explanation on the causes of the power shortages was not given.
- that there was substantial anecdotal corroboration for an interviewee's view that he did not feel able to rely on getting access to Israel for treatment.
- that the programme had accurately reported the interviewee's views and that his impression was a sincere account of his own experience and it was clearly presented as such.
- that there was a sound evidential basis for the commentary from the reporter which introduced the interviewee, in which she states that the blockade of Gaza is having a devastating effect on his daughter's health.
- that by including the statement, "*Gaza is closed*", without any challenge or further context, explanation or qualification, the audience would have been left with the impression that because of the blockade, Israel is literally closed to anyone requiring medical treatment.
- that listeners would be likely to have drawn an inaccurate conclusion about access in general to Israel for medical treatment.
- that there had been a breach of the Accuracy guideline in that the item was not duly accurate in how it reflected the complex issue of access to Israel for medical treatment.
- that the impact of the blockade continues to be a matter of controversy and intense debate and that the content therefore met the guideline definition of a "*controversial subject*".
- that there had been a breach of the Impartiality guideline on this occasion because, in the absence of any challenge, context or alternative view, the opinion of the interviewee – that Gaza is closed in respect of access to Israel for medical treatment - had been allowed to stand as fact.

- that taken as a whole the item had breached the Impartiality guideline by failing to give due weight to a significant perspective in this controversial issue.

The complaint was partially upheld with regard to Accuracy on Point (A); upheld with regard to Accuracy on Point (B); not upheld on Point (C); upheld with regard to Accuracy and Impartiality on Point (D) and; upheld with regard to Impartiality as a whole (Point (E)).

For the finding in full see pages 15 to 26.

## **Network announcements for BBC TV programmes broadcast in Scotland**

The complainant was concerned that network television programme trails featured transmission times that were inaccurate in Scotland.

The Committee concluded:

- that there could be a number of planned scheduling permutations as the BBC in different parts of the UK sought to serve their audiences most appropriately.
- that a verbal reference to several different transmission times might be undesirable, but that BBC network programmes exist to serve all parts of the UK and that it was for the BBC to ensure that broadcast information about transmission times was duly accurate.
- that there had been a breach of the Accuracy guidelines in the six cases highlighted by the complainant.
- that there had been no intention to misinform the audience and that the later scheduling of MOTD in Scotland would be familiar to many Scottish viewers.

The complaint was upheld.

For the finding in full see pages 27 to 30.

## **Margaret Thatcher: The Authorised Biography, BBC Radio 4, 2 May 2013**

The complainant said the reading of Charles Moore's authorised biography of Margaret Thatcher '*Not for Turning*' was a breach of the BBC's Election Guidelines because it influenced voters in the local elections, although to what extent can never be known. He said the BBC should have postponed the fourth reading on the morning of polling day itself and added that a deliberate decision had been made by the BBC to broadcast the biography over five consecutive days in the week beginning 29 April 2013 when it could have delayed by a week to avoid any possibility of influencing the local elections.

The Committee concluded:

- that the episodes did not provide any coverage of the local government election campaigns and so the BBC's Election Guidelines were not engaged in this case.
- that the BBC had made a very finely balanced editorial judgement when it decided to broadcast this Book of the Week in the week of the Local Government Local Elections in May 2013 and Trustees understood why the complainant felt uncomfortable about the BBC broadcasting it at a politically sensitive time.
- that the BBC had demonstrated that it had properly considered the Editorial Guidelines before broadcasting the serialization, that the material was anecdotal in nature and that it had no contemporaneous resonance with the May 2013 local government elections.
- that the Guideline requirement for due impartiality had been met.
- that the complainant had been correctly informed that the ECU's provisional finding had been finalised and that the appeal had been determined
- that whilst it was always open to a complainant to ask the ECU for clarification it might be helpful if the ECU could review the wording it uses to explain that a provisional finding had been finalised without change.

The complaint was not upheld.

For the finding in full see pages 31 to 35.

### **Newsnight, BBC Two, 23 January 2013**

The complaint relates to an interview with a haulier, Peter Carroll, on *Newsnight*, BBC Two, on 23 January 2013. The interview was included in extended coverage assessing reaction to David Cameron's announcement that there would be a referendum on the UK's membership of the EU. The complainant, who is also representing two other individuals, stated that the programme broke BBC Editorial Guidelines because it did not properly signpost that the interviewee was a former Liberal Democrat councillor and former parliamentary candidate.

The Committee concluded:

- that the interviewee's political affiliations were insufficiently significant at the time of the programme's broadcast to require signposting.
- that the interviewee's comments were not of a party political nature; rather they represented a legitimate point of view from the haulage industry.
- that the interview did not require additional signposting to comply with the Editorial Guidelines.
- that the presenter's introduction was duly accurate and was not misleading and therefore the programme did not breach the Accuracy guidelines.

The complaint was not upheld.

For the finding in full see pages 36 to 38.



# Appeal Findings

## BBC News Channel & BBC World News, 14 & 15 November 2012

### 1. Background

On 14 November 2012 Israel launched an air strike on Gaza that killed Ahmed al-Jabari, the commander of Hamas's military wing. Israel then carried out further air strikes, saying the purpose of the operation was to "cripple the terrorist infrastructure in Gaza" and to protect Israeli citizens from rocket attacks from Gaza. Hamas insisted that Palestinians were the victims of the offensive.

On 14 November 2012 at 7.36pm the BBC News Channel introduced an interviewee, Jonathan Sacerdoti, as follows:

"We can get more on this now and speak to Jonathan Sacerdoti who is the director of the Institute for Middle Eastern Democracy."

On 15 November 2012 the interviewee made two further appearances on the BBC News Channel and one on BBC World News. He was similarly introduced on each occasion.

### 2. The complaint

#### Stages 1 & 2

The complainant said that the interviewee was introduced in a manner which gave viewers the impression that he (and his organisation) represented a neutral point of view. She said he was introduced on the four occasions cited as either a "neutral-sounding" "Middle East analyst" or the director of "obscure neutral-sounding think tank", the Institute for Middle Eastern Democracy. She stated that the interviewee had, a long history as a pro-Israel campaigner.

BBC Complaints said in response that the interviewee was just one of a number of contributors used throughout BBC News's coverage of the on-going events in Gaza and Israel, but that BBC News recognised more context could have been given and that its teams would be reminded of the importance of giving useful context in its cues or interviews.

The Controller of the BBC News Channel re-iterated these points in a response to further correspondence from the complainant but said he did not accept that the interviewee had been presented as an independent expert.

The complainant escalated her complaint to the Editorial Complaints Unit (ECU), which upheld the point of complaint relating to accuracy (specifically relating to identifying sources and providing their credentials). The ECU did not uphold the point of complaint relating to impartiality, citing the range of views that had been expressed across the channel's output on this particular story on the day in question.

The complainant responded to the ECU's provisional finding to point out that her initial complaint related to not just one, but a number of broadcasts on the BBC News Channel

and BBC World News. The ECU finalised its finding, without amendment, stating that other instances in which the interviewee had been introduced in such a manner would also have to be regarded as breaches of the guidelines on accuracy.

### **Appeal to the Trust**

The complainant believed that the way the interviewee was introduced also breached the BBC's guidelines on impartiality and raised the following points to support her appeal:

- Point (A): The interviewee appeared four times over two days and on each occasion was inaccurately introduced, leading to an impression that he was an impartial commentator, which was not the case.
- Point (B): All pro-Palestinian contributors were introduced in a way that made their associations clear, whereas the interviewee on these occasions was not.
- Point (C): The ECU suggested that the interviewee's politics were known to BBC News. The complainant believes that, if this were the case, producers should have invited a pro-Palestinian speaker to balance the debate or "at the very least ensure he was accurately introduced as a pro-Israel commentator".

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

The sections of the BBC Editorial Guidelines relating to Accuracy and Impartiality are applicable to this case. The full guidelines are at [www.bbc.co.uk/editorialguidelines](http://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 of the available evidence, including (but not limited to) the Editorial Adviser's report, and the subsequent submissions from the BBC News Channel, BBC World News and the complainant. The Committee also considered additional comments from the interviewee on the factual accuracy and clarity of those sections of the Editorial Adviser's report that related to him.

The Committee endorsed the ECU decision that the broadcasts were in breach of the Accuracy guideline 3.4.12, and welcomed the assurance from the Controller of the BBC News Channel that all BBC News Channel production and presentation teams had been briefed in very clear terms both in writing and in face-to-face meetings about the importance of clearly signposting interviewees when necessary.

#### Point (A):

The Committee noted that the interviewee was a third party in this case. It noted that he was entitled to hold political opinions and express them on BBC channels when invited to do so. The Committee noted that its duty was not to assess his professional abilities as a commentator but instead to ascertain whether the BBC was required to make it clear to viewers that he was associated with a particular viewpoint.

The Committee noted the complainant's view that the interviewee was a pro-Israel campaigner. It also noted that the interviewee had refuted this in correspondence with

the Independent Editorial Adviser, stating that he had appeared as “an analyst of Middle Eastern affairs”.

The Committee noted that the interviewee describes himself on his website<sup>4</sup> as “a commentator and analyst available for interview or debate on politics and the Middle East” and that the site lists several of his appearances across media outlets, including the BBC.

The Committee noted the complainant’s view that the organisation the interviewee was introduced as representing, the Institute for Middle Eastern Democracy, was neither well established nor neutral. It noted that the Institute describes itself as follows:

“The Institute for Middle Eastern Democracy, based in London, works with policy makers, analysts, the media and the wider public, to educate about the circumstances required to achieve and increase liberal democracy in the Middle East.”<sup>5</sup>

The Committee noted the interviewee’s comments to the Independent Editorial Adviser that most of this analysis on the IMED website had “nothing to do with Israel, and covered Middle East topics from across the region.” However it also noted that of the ten most recent pieces of analysis, nine of which carried his byline, seven related to Israel.

The Committee noted that internet research suggests that the interviewee has an active directorship at the Simon Wiesenthal Centre UK; was elected to the International Division of the Board of Deputies of British Jews (the role of which is described<sup>6</sup> as addressing issues affecting Jewish communities abroad, including “anti-semitism in Europe, engaging with the European Parliament and combating the de-legitimisation of Israel”); and is a former freelance Director of Public Affairs at the Zionist Federation of Great Britain and Ireland whose tagline is “Speaking up for Israel”.<sup>7</sup>

The Committee was provided with transcripts of the interviewee’s four appearances on BBC channels on 14-15 November 2012 and noted that the interviewee had expressed the following views:

First Interview - In response to an assertion made by the presenter regarding the escalation of tit for tat responses:

“It’s absolutely true. I mean this all, this round of escalation has kicked off not tonight of course with Israel’s action but a few days ago since Saturday night there were over 130 rockets and missiles launched from the Gaza Strip on Israel so Israel acted at first with restraint, warning that it would have to retaliate in order to protect its civilian population and of course today Israeli leaders have said that the action they’ve taken in striking this particular targeted killing this man who was responsible personally for the kidnapping of the Israeli soldier Gilad Shalit, handed back around a year ago in return for a thousand plus security prisoners, they have struck this guy as a retaliation and to hit out at the infrastructure of Hamas and to stop it targeting their civilians in future.”

Second Interview - Regarding the suggestion made by the presenter that Egypt now has closer links to Hamas:

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4 [www.jonathansacerdoti.com](http://www.jonathansacerdoti.com)

5 <http://instmed.org/>

6 [http://www.bod.org.uk/live/content.php?Item\\_ID=130&Blog\\_ID=425](http://www.bod.org.uk/live/content.php?Item_ID=130&Blog_ID=425)

7 <http://www.zionist.org.uk/>

"That's right the new regime in Egypt is obviously a Muslim Brotherhood regime and Hamas the terrorist organisation that took power in Gaza Strip and now rules the Gaza Strip and is responsible for these terror rockets coming out of that territory, is an offshoot of the same Muslim Brotherhood. So there is obviously a stronger connection there. However Mohammed Morsi has been quite confident in his abilities as the new Egyptian president in his efforts to try and broker a ceasefire in his efforts to try and broker some sort of peace and to take control for example of the terror activities taking place in the Sinai peninsula, part of Egypt, which had increased as well, terror rockets coming from there and attacks going towards Israel. So while he may take a tougher line verbally and overtly and indeed he has since things have hotted up in the region yesterday, it's unlikely I think that he will actually get involved in a more concrete or military way. He's presumably flexing his muscles as well and that's seems to be what's happening here. Every side is looking at the situation, looking at the new terrain that the Middle East has and saying 'We're still strong, we have these rockets, we have these capabilities to take out your terror leaders, we have this capability to broker a peace between the two of you' and it's something that we need to wait and see what will happen, who will come out on top of that, who will be able to exert their power and ultimately Israel will be hoping I presume to be able to achieve some level of security and safety for its one million citizens who it says are in range of these rockets coming out of the Gaza Strip."

Third Interview - In response to the presenter asking where he thought the conflict was leading:

"Absolutely that's the million dollar question is what's going to happen next? I think that Hamas in Gaza and Islamic Jihad, organisations continue to rain rockets on the south of Israel and that's escalated hugely since Saturday night, Israel showing the restraint it did but eventually caving in and using their abilities to take out a leading Hamas terrorist as a form of protection for their civilians in the South and then that has escalated since then of course the rockets have got even more intense from the Gaza Strip into Israel."

The Committee also considered the comments made by the BBC News Channel that:

- It was clear on review that the interviewee's answers could be seen to take a particular stance on the validity of Israel's military action – "in other words that in terms of guideline 4.4.14, [his] perspective was 'apparent from their contribution'."
- On major stories BBC News Channel viewers "regularly see a range of analysts and commentators used over a period of several hours or a whole day – and no one individual's opinions are presented as definitive or entirely neutral. It is in this context that while it would have been preferable for a clear explanation of his background to be given, we would not accept that our interviews with [the interviewee] 'implicitly suggested that the view he was offering was a "centrist" view'."
- "Although [the interviewee] clearly has a particular perspective on the conflict, it would not be right to place him in the same category as official spokespeople or office holders. Rather, he was one of a number of commentators and analysts with differing views, though clearly we have accepted these should have been outlined to the audience in summary form. In that context we would argue that his contribution was not a defining factor in an assessment of our due impartiality."

The Committee noted that the ECU had concluded that impartiality was achieved by the expression of a number of views and perspectives across the BBC News Channel's output on 14 November 2012. The Committee considered detailed information drawn from archived running orders and concluded that, despite challenging circumstances the BBC had worked hard to provide a range of views across the output of the BBC News Channel and BBC World News.

The Committee noted the statement by the Controller of the BBC News Channel that the programme team had clearly understood the controversial nature of the Gaza/Israel violence.

The Committee noted the comments by BBC World News about the interview on 15 November 2012. BBC World News stated that the interview was part of a breaking news sequence and that it was immediately preceded by an interview with a representative of the Muslim Brotherhood.

Trustees noted that BBC World News no longer had access to the recording but having reviewed the script it acknowledged that neither introduction explicitly stated that the interviewee was a supporter of Hamas or Israel but that their perspectives were clear from the context and, presumably, the content of the interviews.

However the Committee agreed that the airing of a range of views was not the only factor in determining whether impartiality had been breached. It noted the requirements of Impartiality guideline 4.4.14 which states:

"We should not automatically assume that contributors from other organisations... are unbiased and we may need to make it clear to the audience when contributors are associated with a particular viewpoint, if it is not apparent from their contribution or from the context in which their contribution is made."

The Committee concluded that audiences should be given sufficient information to be able to assess a contributor's status and to accord weight to their arguments. It appeared to the Committee, from his involvement with various organisations and such organisations' published purposes, that the interviewee was associated with a particular viewpoint. Whilst the interviewee's broadcast views, when considered together and with more detailed knowledge of his biography, could indicate a pro-Israeli perspective on the events in question, this might not have been apparent without the appropriate signposting. The Committee could not conclude that audiences would have been able to deduce that he spoke from a particular viewpoint. The Committee concluded that he was introduced without sufficient context. The BBC had not made clear to the audience that the interviewee was associated with a particular viewpoint and this had resulted in a breach of impartiality guideline 4.4.14.

### **The point was upheld.**

#### Point (B)

The Committee noted the complainant's argument that all pro-Palestinian contributors were introduced in a way that made their associations clear, whereas Mr Sacerdoti was not.

The Committee also noted the statement by the BBC News Channel Controller that a range of commentators was interviewed on the channel during 14 and 15 November 2012

and that several were simply introduced with the title of the organisation they represented; (the Committee noted that this approach had now been amended by BBC News).

The Committee noted that information drawn from News Channel running orders supported this statement:

"Yossi Mekelberg joins me in the studio he's an Associate Fellow of the Middle East programme at the Royal Institute of International Affairs."

"Joining me in the studio now is Professor Fawaz Gerges, the Director of the Middle East Centre at the London School of Economics."

"For more analysis on the situation Shashank Joshi from the Royal United Services Institute is in our Central London studio..."

"Let's cross now to our Central London studio to talk to the Israeli Ambassador to the UK, Daniel Taub."

"Here in the studio is Manuel Hassassian who is the Palestinian Ambassador to the UK."

The Committee concluded that all of the News Channel's interviewees were introduced in a similar fashion: by their name, title and the name of the organisation they represented; they found no evidence that contributors were introduced differently depending on their political perspective.

### **This point was not upheld.**

#### Point (C)

The Committee considered the complainant's argument that producers should have invited a pro-Palestinian speaker to balance Mr Sacerdoti's comments during his three appearances on the News Channel.

The Committee noted that the ECU had suggested in its finding that the interviewee's politics were known to BBC News. The complainant believed that, if this were the case, producers should have invited a guest to balance the debate.

The Committee noted that BBC News had accepted a failure of accuracy in research and description but that it did not accept the ECU's comments:

"In fact [the interviewee's] background was not fully understood by the producer of the interview and therefore not conveyed to the presenter (and consequently the audience) in clear terms. This is evidence of a failure of accuracy in research and description – and not that a particular viewpoint was fully understood by our staff, yet omitted from the way the item was presented."

The Committee concluded that, whether or not the interviewee's views were known to the producers, there was no requirement to balance his comments with an accompanying guest holding an alternative viewpoint. The Committee noted Impartiality guideline 4.4.26 which sets out requirements for due impartiality over time on continuous output, and which states that "it is not usually required for an appearance by a politician, or other

contributor with partial views, to be balanced on each occasion by those taking a contrary view”.

**This point was not upheld.**

Finally, the Committee considered three questions posed by the complainant during the appeals process.

1. The complainant asked why the ECU advised “that it could only consider single instances if it is actually able to consider several appearances”. This related to the apparent decision by the ECU to consider one of the four cases raised by the complainant as opposed to all four.

The Committee noted that, during the complaints process, some contact took place by telephone and it had seen no written advice to the complainant that only one instance would be considered. However, it also noted that the complainant had consistently referred to all four instances during the complaints process, whereas the ECU had focused solely on the 14 November appearance. The Committee understood that any complaint about a failure of impartiality over time would be referred to BBC News at Stage 2, rather than the ECU. However, the Committee noted that in this case the ECU could have considered all four instances against the BBC’s guidelines on accuracy, because each case was essentially a repeat of the preceding one, and that the ECU had indeed acknowledged to the complainant that “[o]ther instances in which [the interviewee] was introduced in the same way would also have to be regarded as breaches of the guideline on accuracy”, i.e. guideline 3.4.12. The Committee also noted that the ECU would have been able to consider the four instances against the BBC’s guidelines on impartiality by examining whether the way the contributor was introduced led to a breach of the guideline, rather than by assessing impartiality over time.

The Committee understood that the correct and simplest way to handle more complex complaints could present challenges for the BBC. It regretted any confusion that had occurred in this case.

2. The complainant asked why the ECU claimed that the interviewee’s politics were “well known to the BBC” if this was not the case. The Committee noted that the contributor’s viewpoint might be known to some programme-makers in BBC News, as he had previously appeared as an interviewee on BBC channels and would therefore have featured in archived running orders or contacts lists. However, the Controller of the News Channel had stated that his “background was not fully understood by the producer of the interview”. The Committee concluded the two statements were not contradictory.

3. The complainant asked whether the contributor will “be introduced as a pro-Israel commentator in future and will producers be encouraged to do thorough research into interviewees especially if asking them to commentate on such a controversial issue at such a sensitive time?”

The Committee noted that its role was to establish whether there had been a breach of the editorial guidelines and that it would be inappropriate to single out specific individual contributors as requiring a particular label. However, the Committee reminded the BBC of the requirement under the guidelines on accuracy (3.4.12) and impartiality (4.4.14) to provide sufficient context about the credentials of contributors to make it clear when they are associated with a particular viewpoint, so audiences can judge their status. The Committee also welcomed assurances by BBC News that the form of introduction previously used by the News Channel had now been amended.

**Finding: Partly Upheld**



## Health Check, BBC World Service, 4 October 2012

### 1. Background

*Health Check* is a weekly 30-minute round-up of global health stories broadcast on BBC World Service radio. Each episode contains a number of items.

The programme can also be heard by listeners who tune to Radio 4 during the overnight closedown hours. This episode was broadcast just after 4am on 4 October 2012.

The allegations in this appeal concern a five-minute feature about the challenges of delivering effective renal dialysis to kidney patients in the Gaza Strip.

Those arguments raised during Stage 1 and Stage 2 correspondence which were considered most relevant to the Committee's consideration of the issues raised in this appeal are summarised below.

### 2. The complaint

#### Stages 1 and 2

The complainant contacted the BBC on 4 October 2012 saying the item was inaccurate because the audience would have been left with the impression that Israel is restricting the supply of medicine and medical equipment in Gaza, and the supply of fuel for the power stations.

The complainant argued, that apart from military supplies, there is no blockade of Gaza and that the shortage of fuel is because the Hamas government in Gaza elects to source its supplies from Egypt.

The complainant said the report suggested that patients could not get medical treatment in Israel and this was also untrue.

The complainant received responses from BBC World Service Audience Relations and via them from the programme team. His complaint was not upheld.

The complainant wrote to the Editorial Complaints Unit (ECU) on 19 October 2012 asking it to investigate.

The Head of the ECU wrote to the complainant on 25 February 2013 with the provisional outcome of his investigation.

The ECU had sought the view of the World Health Organisation (WHO). The WHO did not believe that the negative impact arising from the blockade on health care in the area extended to medicines and medical supplies and that:

“...the current shortages of drugs and disposables are not a **direct** result of the blockade – Israel does not restrict imports of drugs to Gaza – but rather the result of the financial problems facing the Palestinian Authority.”

The ECU noted an earlier WHO report:

“The causes of shortages are complex and include a combination of budgetary problems faced by the MoH in Ramallah, disconnection and distrust between West

Bank and Gaza MoH information lines as a result of internal political issues, personnel changes of Central Drug Store staff in Gaza, and bureaucratic and transportation lags in the procurement and supply chain.”

The ECU concluded:

“...the evidence does not seem to us to support the suggestion that shortages of medicines and medical equipment result from Israeli action..., I do not think the wording [in the item] succeeds in avoiding the impression that the shortages were due to Israeli restrictions on the supply of medicines and medical equipment. As that impression is inaccurate, I am upholding this aspect of your complaint.”

The ECU did not uphold the remainder of the complaint.

The ECU’s provisional finding of February 2013 was sent to an incorrect email address and was not received by the complainant until 3 July 2013, beyond the deadline given by the ECU for the complainant to comment on the draft finding. In the meantime it had been finalised. It was published on the ECU’s website on 11 July 2013. This was what it said:

**“Health Check, World Service, 4 October 2012  
Complaint**

A listener complained that an item on the situation of people with kidney failure in Gaza gave the misleading impression that medical supplies and equipment were subject to the Israeli blockade, and that the item was misleading in other respects.

**Outcome**

In most respects the item was not misleading. However, the sentence “The blockade of Gaza for example has led to shortages of medicines and medical equipment” gave the impression that the Israeli blockade covered medical supplies, which is not the case.

**Partly upheld**

**Further action**

In future, when commissioning reports from freelance reporters abroad, **Healthcheck** will ensure they take advice from the local BBC bureau before finalising the item.”

As the misrouting of the provisional finding meant the complainant had missed the opportunity to comment on it before it was finalised, he was advised by the ECU that having now seen it, if he had any outstanding points, the best course of action would be to appeal to the Editorial Standards Committee (ESC).

On 3 August 2013 the complainant wrote to the ECU and to the BBC Trust saying the material could still be heard online and there was still no mention on the *Health Check* website of a complaint being upheld.

On 2 September 2013 the Head of the ECU wrote to the complainant advising him that there had been a change to the text of the published summary of his complaint following concerns which had been raised by two readers. The Head of the ECU told the complainant:

“As a result of further investigation, I’ve concluded that the original wording (in particular, the phrase ‘medical equipment’) was too broad, and could be

understood as encompassing items which have from time to time been subject to the blockade. Accordingly, I've changed the 'Outcome' section to read as follows:

### **Outcome**

In most respects the item was not misleading. However, it gave the impression that the Israeli blockade covered drugs and disposables, which was not the case in the period under discussion."

The complainant asked how he could challenge the revised wording and was advised by the Head of the ECU that there was no clear procedural precedent. But if he believed the change in wording had materially affected the finding in a sense which he contested, then it was open to him to appeal to the ESC.

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

The complainant wrote to the BBC Trust on 4 September 2013.

He noted that the original content remained available online and that although there was a note of the correction on the *Health Check* webpage it was only accessible if the reader selected the "see more" option.

Referring to the September revision to the summary of the finding by the ECU, the complainant said:

- It gave the inaccurate impression that the blockade at some time did cover drugs and disposables.
- Given that the ECU finding previously said "the sentence '**The blockade of Gaza for example has led to shortages of medicines and medical equipment**' gave the impression that the Israeli blockade covered medical supplies, which is not the case", the change left the false impression that the blockade covered medical equipment.

The complainant said the clear suggestion in the programme was that the blockade was responsible for the shortage of medical equipment and for the power cuts:

"That was never the case. The power cuts were as a result of the fuel shortage, but that fuel shortage resulted from Hamas choosing to get its fuel from Egypt and then Egypt not delivering."

The complainant included a link to the *Times of Israel* website and cited a poll conducted in March 2012 in which almost 50% of Gazans blamed the Hamas Government for fuel shortages.

He said there has never been an Israeli blockade on medical equipment and that any shortages were because of disputes between (the governments) in Gaza and the West Bank. The complainant maintained that many of the problems relating to Gazans getting medical treatment outside of the Gaza Strip were also due to disputes between Fatah and Hamas and not, due to the blockade. He supplied a link to a news story from the AP wire agency in support of his assertion and details of exit permits granted by Israel for medical treatment and for accompanying individuals.

Referring to the case study in the *Health Check* feature highlighting the case of a six-year-old girl with renal failure, he provided a link to a news story about four children from Gaza receiving dialysis treatment in Israel and said:

“Those children had almost identical ailments to [the six year old] ...the statement by her father that that treatment wasn't open to them was wrong and some comment correcting the false impression given to the listener should have been made.”

### 3. Applicable Editorial Guidelines

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The editorial guidelines on Accuracy and Impartiality are applicable to this complaint.

### 4. The Committee's decision

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

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

**Point (A) – regarding the allegation that the ECU finding is misleading: that the revision suggests that some medical equipment and hardware was covered by the blockade and that it also gives the impression that at some time the blockade covered drugs and disposables, which it never did:**

The Committee noted that the allegation concerned the wording of the ECU finding, which upheld one aspect of the item as inaccurate and that it related to the introduction to the *Health Check* item (relevant sentence in bold):

“People with kidney failure need dialysis two or three times a week if they are to survive. So in regions where there are conflicts continuing treatment can be difficult. **The blockade of Gaza for example has led to shortages of medicines and medical equipment.** Hospitals there have the right machinery to carry out dialysis but daily power cuts and lack of filters for the equipment is making it hard for doctors to give people the treatment they need.”

The Committee noted that the ECU finding and the correction which was published in September 2013 now appear also on the *Health Check* website:

“In most respects the item was not misleading. However, it gave the impression that the Israeli blockade covered drugs and disposables, which was not the case in the period under discussion.”

The Committee noted that the wording replaced an earlier version of the finding, published in July 2013, which said:

“In most respects the item was not misleading. However, the sentence (in the commentary) ‘The blockade of Gaza for example has led to shortages of medicines

and medical equipment' gave the impression that the Israeli blockade covered medical supplies, which is not the case."

The Committee noted the reasoning for the revision given by the ECU to the complainant, that it was following concerns raised by some readers. The Head of the ECU said in his letter advising of the decision:

"As a result of further investigation, I've concluded that the original wording (in particular, the phrase 'medical equipment') was too broad, and could be understood as encompassing items which have from time to time been subject to the blockade."

The Committee noted the complainant's points from his letter of appeal:

- That the scope of the finding had been reduced by the revision.
- That, given the wording of the previous finding, the change leaves the false impression that the blockade covered medical equipment which it never did.
- That the wording now gives the impression that the blockade at some time covered drugs and disposables, which it never did.

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

"The change was to accommodate the point that various kinds of medical supply have been directly affected by the blockade at various times, albeit not the kind of stuff the programme was concerned with at the material time."

"The reference to the timeframe isn't intended to imply anything about what may have been the case at other times. It simply reflects the distinction between what we do and don't know as a result of our investigation. We didn't set out to investigate whether the implication of the disputed phrase would ever have been justified, but whether it was justified at the time of publication. Having stated matters too broadly in the first version of the summary, my intention was to confine the second version strictly to what we could substantiate. There's a tissue of claims and counter-claims in this area, not all of which needed to be adjudicated on in order to reach a finding on the accuracy of what Health Check said."

The Committee noted that in March 2011, nine months after Israel eased the blockade, the UN Office for the Coordination of Humanitarian Affairs (OCHA) published a report on the humanitarian situation in Gaza. Commenting on medicines and medical supplies, the OCHA report said:

"Additional challenges facing the health system include the entry of medical equipment and its maintenance, as well as the supply of drugs. Following the easing announcement, the usual time it takes to process a coordination request for the entry of medical equipment decreased from more than six months, to approximately two months.

"Yet, proper maintenance of available equipment is still challenged by restrictions on the entry of technicians and manufacturers, as well as on the ability to send equipment for servicing outside Gaza. The catheterization theatre at European Gaza Hospital (EGH), for example, has been plagued by malfunctioning problems that local technicians have been unable to solve. Dealers hesitate to send spare parts for testing, as the manufacturer asks them to buy the pieces up-front, and

return from Gaza cannot be guaranteed if the piece turns out to be the wrong one. The machine was completely out-of-order between August 2010 and January 2011.

"Requests for the entry of essential drugs and medical disposables continued to be processed relatively quickly (24 to 48 hours). Supply of the latter, however, has deteriorated due to disputes and lack of coordination between the Palestinian Authority in Ramallah and the local authorities in Gaza. By the end of January 2011, 38 percent of essential drugs available in Gaza's Central Drug Store had reached zero stock levels, that is a less than one month supply."<sup>8</sup>

The Committee noted the formulation in the revised finding which now clearly defined which items the ECU felt the programme had not been duly accurate about, i.e. that the report had wrongly given the impression that the Israeli blockade covered drugs and disposables.

The Committee accepted that the original formulation had been too wide in its scope, given the evidence that the blockade had led to shortages of medical equipment from time to time, and that the finding was now duly accurate in this respect.

The Committee then considered the final clause in the revised finding:

"However, it gave the impression that the Israeli blockade covered drugs and disposables, **which was not the case in the period under discussion.**"

The Committee noted the ECU's contention that it had not meant to imply that drugs and disposables had at some time been affected by the blockade; and it had some sympathy with the difficulties of judging the claims and counterclaims about the effects of the blockade.

However, the Committee agreed with the complainant that the wording could be understood to mean that *the Israeli blockade had covered drugs and disposables* at some period. The Committee decided the summary of the finding was not duly accurate in this regard. Accordingly, the Committee agreed to refer the wording back to the ECU with a request that it be amended.

### **Finding: partially upheld**

#### **Point (B) – regarding the allegation that the item remains available online and that the correction is not prominent enough:**

The Committee noted the complainant's comments in his initial correspondence for this appeal:

"...the comment against which my appeal was made can still be heard 12 minutes 30 seconds into the audio. It is surely wrong that a programme that remains on the iplayer for up to a year after broadcast so that people have a continued chance to listen to it should remain available with the statements being said in the broadcast and written on the web page that have had complaints of inaccuracy upheld against them with no notice of the finding on the web page."

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<sup>8</sup>[http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_easing\\_the\\_blockade\\_2011\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_easing_the_blockade_2011_03_english.pdf)

The Committee noted the complainant's comments when he was subsequently advised that a note had been added to the "see more" section of the webpage:

"In order to see the disclaimer the viewer has to click on (SEE MORE) at the bottom of the page. Those who simply listen to the programme on the iPlayer will still hear the acknowledged (by the ECU) inaccurate statement in the programme without knowing that it is inaccurate."

The Committee noted that in correspondence with the Independent Editorial Adviser for this appeal the producer of *Health Check* said she would be willing to put the correction on the main page of that edition of *Health Check*. However, the Committee noted that this did not yet appear to have been done.

The Committee noted the relevant consideration is clause 3.2.4 of the Accuracy guideline:

"We should normally acknowledge serious factual errors and correct them quickly, clearly and appropriately."

The Committee noted it had taken six months from the finding for the correction to appear online. It agreed with the complainant that this was too long.

The Committee agreed with the complainant that, even though there was an acknowledgement of the finding on the *Health Check* website, it was not sufficiently prominent and it was possible that a listener would hear the item without being aware of the factual error.

In the Committee's view the form in which the correction appeared was neither clear nor appropriate. It would have expected to see the finding clearly on the episode and item pages.

In addition, the Committee agreed with the complainant that the correction should also be reflected on all BBC webpages on which the content in question was available.

The Committee considered that the BBC would not necessarily be required to remove an item from the website if a complaint had been upheld, providing that a note of the inaccuracy had been clearly and appropriately published alongside the online version of the item.

The Committee would require the BBC to note the correction on the relevant webpages within a reasonable period of the finding having been finalised by the ECU.

### **Finding: Upheld**

#### **Point (C) – regarding the allegation that the programme gave the inaccurate and biased impression that the blockade is responsible for power shortages:**

The Committee noted the complainant's comments in correspondence for this appeal citing weblinks to various online sources to support his allegation:

"The clear suggestion was that the blockade was responsible for the shortage of medical equipment and for the power cuts. That was never the case. The power cuts were as a result of the fuel shortage, but that fuel shortage resulted from Hamas choosing to get its fuel from Egypt and then Egypt not delivering."

The Committee noted the three occasions in the item in which the power crisis in Gaza was mentioned. First, in the introduction to the item (relevant wording in bold):

“People with kidney failure need dialysis two or three times a week if they are to survive. So in regions where there are conflicts continuing treatment can be difficult. The blockade of Gaza for example has led to shortages of medicines and medical equipment. **Hospitals there have the right machinery to carry out dialysis but daily power cuts** and the lack of filters for the equipment is making it hard for doctors to give people the treatment they need.”

Then in these two mentions in the report:

**REPORTER:**

Ali al Sharma is 65 years old and comes to Shifa Hospital’s Renal Unit for dialysis three times a week. His worries include the frequent power supply failures in the hospital.

**PATIENT:**

We face many many times of electricity cuts and just today one of the patients after they cut off the electricity she has blood clots. And the doctors changed all the consumables and supplies and put another one ...

**REPORTER:**

The regular power cuts can be life-threatening to kidney patients, says Dr Shattar.

**DR SHATTAR:**

When the electricity cuts and there are problems with the generator the machine has to either be operated manually or else there is going to be a blood clot with the patient’s blood which will create much further complications beyond the immediate renal problem.

The Committee noted that on none of the three occasions in which power failures were discussed in the item was it stated or implied that they were the result of the blockade or the responsibility of Israel. In the case of the reference in the introduction, the clear impression was that “conflicts” can cause problems with power supplies. On the other two occasions no reason is suggested or implied for the power cuts.

The Committee felt that listeners would be aware that there are many ways in which conditions are difficult for those living in Gaza, and that this was due to a variety of reasons, not solely the blockade; and that it was not a breach of either the accuracy or impartiality guidelines that further explanation on the causes of the power shortages was not given.

**Finding: Not upheld**

**Point (D) – regarding the allegation that listeners are left with the inaccurate and biased impression that the border is closed to those in Gaza requiring travel to Israel for medical treatment:**

The Committee noted the relevant script:

**REPORTER:**



[The 6-year-old girl], who's six, has had complete kidney failure for 18 months. She comes to Annas Hospital three times a week for dialysis. Her father, [...] says that the blockade of Gaza is having a devastating impact on her health.

**FATHER:**

Gaza is closed. I'm thinking of how we can transplant a kidney. We'd have to go abroad. Israel is not, is not open for us. This department is good it's decent it's respectable. ...If we want to do anything to get her out of the situation, which is a kidney transplant, we'd have to go abroad and it's so difficult.

The Committee noted the allegation in the complainant's letter of appeal:

"Many of the problems of Gazans in getting treatment outside of the Gaza Strip were due to disputes between Fatah and Hamas<sup>9</sup> and not, as was suggested by the programme, due to the blockade. ... Israel had long since stopped the security related restrictions that meant that some people had difficulty in getting treatment outside of the Gaza Strip.

"... last month alone more than 1400 exit permits were granted by Israel for medical treatment and for accompanying individuals. I gave a link to a ... story of four children from Gaza who received life-saving dialysis at a children's hospital in Israel.

"Those children had almost identical ailments to [the child] ... There is no reason why [the child] could not have got exactly the same treatment as the other children suffering from the same disease. And the statement by her father that that treatment wasn't open to them was wrong and some comment correcting the false impression given to the listener should have been made."

The Committee noted the response from the reporter in correspondence for this appeal:

"What was not included in the Health Check report I filed from Gaza was how the father of the child interviewed in the piece had already lost a son to the same condition. He had experienced severe difficulties trying to obtain professional health care from hospitals in Israel for his sick son who subsequently died. The difficulties he experienced trying to get help for his sick children were replicated by several other patients I interviewed, whose accounts were not included in this report for the sake of brevity."

The Committee noted too an email in response to this complaint from the translator for the interviews conducted in the hospital:

"The conversation we had ... is that unless one is in imminent danger of dying, Israel would not allow them in for any medical procedure. That's a fact. So that's what he meant by 'Gaza is closed, completely shut; Israel is not open for us'. Basically he wanted to convey the feeling of seeing his daughter dying slowly – not yet in her final stages – but a kidney transplant at this stage in Israel is still not an option. This is his wording – I was merely translating – but he had also added that he'd want to give her one of his kidneys if he could do that in Israel – and that he was wary of doing it elsewhere, particularly because it would require regular followups. So even if, theoretically, his daughter were to be allowed into

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<sup>9</sup> <http://apnews.myway.com/article/20120722/DA0620D81.html>

Israel for a one-time operation, it would still be too risky to be unable to take her swiftly into Israel if an emergency occurred.”

The Committee noted the ECU’s view at Stage 2 that even taking into account the examples given by the complainant about dialysis in Israel for children from Gaza it did not follow that the girl’s father had given an incorrect account of his own experience. The Committee noted too the ECU’s observation that there does appear to be evidence that a proportion of patients experience, sometimes life-threatening, delays while awaiting permission to enter Israel.

The Committee noted the ECU’s citation of a WHO report which was published in *The Lancet* in October 2012 and which found:

“In 2011, 1082 (10%) of 10,560 applicants in the Gaza Strip had their access permits denied or delayed, with no reason given, and 197 (2%) were called for security interview. Patients aged 18–40 years had the highest rate of denied or delayed permits. Tracer interviews with Gazan families of patients who had their permits denied or delayed showed that six patients died while waiting for the permits.”<sup>10</sup>

The Committee noted the complainant’s assertion that the figures quoted by the ECU were for 2011 and were already outdated by the time *Health Check* was broadcast.

The Committee noted a more recent monthly figure which covered the transmission period of the programme and which appeared to show a similar picture. In October 2012, according to the WHO, there were 798 referrals by the Ministry of Health in Gaza (MoH); 10% received no response to their application and missed their hospital appointments, a further 12 were called for Israeli security interviews and 6 patients were denied permits.<sup>11</sup>

The Committee noted that the report stated that it was the lowest number of referrals since the WHO had begun monitoring monthly totals in 2010, but that it was not because of restrictions imposed by Israel:

“The reduction is due in part to a physicians’ strike in Egypt, as well as the MoH recent acquisition of MRI equipment and increased catheterization capacity, and the closure of Jordanian hospitals to new MoH patients as a result of the PA’s accrued debt.”

The Committee noted also a separate WHO report covering referrals in July 2012 noted that MoH referrals of Gaza patients to Jordan and Israel were significantly reduced in July “reflecting the financial crisis of the Palestinian Authority”.

The Committee noted the substantial anecdotal corroboration for the interviewee’s view that he did not feel able to rely on getting access to Israel for treatment. This included tracer interviews conducted by the WHO and a video report for the *Guardian* published on their website in July 2012 which covered identical issues to this *Health Check* report and featured some of the same interviews.<sup>12</sup>

The Committee took the view that the programme had accurately reported the father’s views, that his impression was a sincere account of his own experience and it was clearly

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10 <http://download.thelancet.com/flatcontentassets/pdfs/palestine2012/palestine2012-12.pdf>

11 <http://unispal.un.org/UNISPAL.NSF/0/DC014B939F2CBB1D85257AC4006F0D2E>

12 <http://www.theguardian.com/global-development/video/2012/jul/11/gaza-healthcare-video>

presented as such. The Committee noted also that there was a sound evidential basis for the commentary from the reporter which introduced the contributor, in which she stated that the blockade of Gaza was having a devastating effect on his daughter's health. (Trustees had in mind that he had experienced difficulties in trying to obtain professional health care from hospitals in Israel for his sick son who subsequently died and so had come to the conclusion that a transplant was not a practical option because he might need speedy access across the checkpoint and from experience that would prove a problem.)

The Committee then considered the wider allegation, that by including the statement, "Gaza is closed", without any challenge or further context, explanation or qualification, the audience would have been left with the impression that because of the blockade, Israel is literally closed to anyone requiring medical treatment. As this was demonstrably not the case, the Committee concluded that listeners would be likely to have drawn an inaccurate conclusion about access in general to Israel for medical treatment.

In the Committee's view there had been a breach of the Accuracy guideline in that the item was not duly accurate in how it reflected the complex issue of access to Israel for medical treatment.

In relation to whether this aspect of the item was duly impartial, the Committee decided that the impact of the blockade continues to be a matter of controversy and intense debate and that the content therefore met the guideline definition of a "controversial subject". The Committee noted clause 4.4.7 of the Impartiality guideline which 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 Committee decided that there had been a breach of the Impartiality guideline on this occasion because, in the absence of any challenge, context or alternative view, the opinion of the father – that Gaza is closed in respect of access to Israel for medical treatment – had been allowed to stand as fact.

### **Finding: Upheld**

#### **Point (E) – the Committee then considered whether, taken as a whole, the item was duly impartial:**

The Committee noted the finding of a failure of accuracy at Stage 2 by the ECU with regard to how the item reflected the effect of the blockade on the supply of drugs and disposables. The Committee noted too its own finding for this appeal, that the item was neither duly accurate nor duly impartial in how it reflected the complex issue of access to Israel for medical treatment.

The Committee noted that, while there was substantial, well-sourced evidence, as considered for this appeal, that the PA and Hamas bore a significant responsibility for some of the problems identified in the *Health Check* report, the item had mentioned the blockade and "the conflict" only in general terms as reasons for the crisis in Gaza's renal services.

The Committee noted again clause 4.4.7 of the Impartiality guideline which 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 Committee decided that taken as a whole the item had breached the Impartiality guideline by failing to give due weight to a significant perspective in this controversial issue.

**Finding: Upheld**

# Network announcements for BBC TV programmes broadcast in Scotland

## 1. Background

BBC One Scotland has the facility to opt out of the BBC One network schedule in order to serve its audiences effectively. This means that on occasion programmes transmit at different times in Scotland from the rest of the UK.

## 2. The complaint

### Stages 1 & 2

The complainant made six complaints about occasions when BBC Sport trailed other sports programmes which were not broadcast in Scotland at the time mentioned on air.

Complaint 1: on 2 February 2013 a sports bulletin within the 10.10pm BBC News bulletin on BBC One trailed *Match of the Day* as following the news. In Scotland *Match of the Day* was broadcast at 11.50pm.

Complaint 2: on 17 February 2013 the 10pm BBC One News bulletin trailed *Match of the Day 2* as being broadcast at 11.05pm when it was not scheduled to be broadcast at this time in Scotland.

Complaint 3: on 10 March 2013 *Match of the Day 2* trailed the "following" programme as starting at 11.25pm. When the trail was read out in Scotland during *MOTD 2* it was already 11.55pm.

Complaint 4: on 16 March 2013 *Match of the Day* had trailed the Australian Formula 1 Grand Prix on BBC One at 2.20pm on 17 March 2013, when in fact it was broadcast on BBC Two in Scotland.

Complaint 5: on 17 March 2013 the BBC One News at 10pm contained a sports bulletin which trailed *Match of the Day* as following straight afterwards, when in fact *Sportscene* followed straight after the news in Scotland.

Complaint 6: Highlights of the final day of the PGA golf Championship were broadcast at 11pm on 26 May 2013 in Scotland. The complainant complained that viewers were told it would be broadcast at 6pm by both the golf highlights programme the previous day and the Women's FA Cup Final programme.

At Stage 1 the complainant received responses from various BBC departments.

BBC Scotland's Sports Editor replied to Complaint 1. He explained that, having secured rights to Scottish football highlights, his responsibility was to obtain maximum value for money and offer the best possible coverage to viewers interested in Scottish football. He "could only apologise that Network News gave out the wrong scheduling information for Scottish viewers".

BBC Complaints responded to Complaints 2 - 5 stating that:

- Scottish viewers were aware of the regular displacement of *MOTD 2* by *Sportscene*.

- It would be a “poor use of the licence fee” to have two different versions of *MOTD 2* “for the sake of one short remark”.
- BBC Scotland “evidently took their own local decision to opt out from the network BBC One Channel” and such decisions were taken locally.
- It was not always possible or practical to mention that transmission times in Scotland differed.
- Full information was available online and in the Electronic Programme Guide (EPG) listings.

BBC Scotland’s Scheduling Manager responded to Complaint 6, expressing regret for the “misleading information you were given on broadcasts on the network”. BBC Scotland tried to inform viewers about schedule variations but “the golf wasn’t being trailed on this occasion”.

BBC Scotland’s Head of Public Policy & Corporate Affairs replied to all elements of the complaint at Stage 2. He stated that there was no intent to misinform viewers.

“Given the vast range of BBC network TV output, broadcast each day across network channels, I’m afraid there will be times when the scheduling times of programmes, as broadcast in Scotland and elsewhere, will differ from the network (given the insertion into the local schedules of local (or ‘opt-out’) programming) and where network announcements will not reflect every change in the schedules. We make every effort to ensure that BBC One Scotland and BBC Two Scotland schedule information is available for our viewers, through press information, listings magazines such as Radio Times, on our website and through on-screen trails. As noted in the earlier response to you, we do appreciate your frustration when network announcements on programmes to be broadcast do not align with the times those programmes will be broadcast in Scotland. Please be assured that the points you raise have been noted, as indicated earlier, and brought to the attention of the relevant programme staff.”

## **Appeal to the Trust**

The complainant appealed to the Trust on 5 August 2013 asking that “BBC network announcements must include, if they differ, the broadcast times for Scotland.”

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

The sections of the BBC Editorial Guidelines relating to Accuracy are applicable to this case. The full guidelines are at [www.bbc.co.uk/editorialguidelines](http://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 of the available evidence, including (but not limited to) the Independent Editorial Adviser’s report, and the subsequent submissions from BBC Scotland and BBC Sport.

The Committee noted that the instances cited by the complainant were a mix of verbal mentions during sports news broadcasts, verbal mentions during sports programmes and promotional boards shown during sports programmes.

The Committee noted that BBC Sport had confirmed to the Independent Editorial Adviser that BBC Sport producers were “responsible for ensuring the accuracy of all messages broadcast during these programmes, sourcing the information from TV listings guides, the BBC website or through our service provider, Red Bee”.

The Committee noted BBC Scotland’s comments that the BBC was contractually constrained from broadcasting any highlights programme before the full weekend’s Scottish Premier League schedule was completed. As there are usually both Saturday and Sunday games, *Sportscene* is usually broadcast in Scotland on Sunday evenings at the same time that *MOTD 2* is broadcast in England, with *MOTD 2* being time-shifted in Scotland to follow *Sportscene*.

The Committee also noted BBC’s Scotland’s report that, over a period from 12 January 2013 to the beginning of October 2013, there were 19 occasions when *Sportscene* was broadcast at 10.25pm on BBC One in Scotland, displacing *MOTD 2*. There was a further occasion when *Sportscene* was moved to 10pm and shown on BBC Two in Scotland. There were also two occasions when *Sportscene* displaced *MOTD* on Saturdays, due to Scottish Cup coverage.

The Committee acknowledged comments by BBC Sport and BBC Scotland that viewers, particularly those who were football fans, were aware that schedule variations exist and that the displacement of *MOTD 2* in Scotland by *Sportscene* was a regular variation. The Committee therefore expressed surprise that, despite this well established transmission pattern, BBC Sport had given out inaccurate information about the scheduling of *Sportscene*, *MOTD* and *MOTD 2* on the four occasions cited by the complainant.

The Committee noted that comprehensive schedule information is published in the Scottish and UK press, in listings magazines, on websites, in the EPG and via on-air trails.

The Committee also acknowledged BBC Sport’s assurance that there was “no deliberate policy within BBC Sport to discriminate against viewers in Scotland when promoting future BBC Sport output”.

The Committee noted the BBC’s assurance that, “as a point of principle BBC Sport endeavours to ensure that differences between transmission times (or channels) across geographic areas are acknowledged in our on-air announcements”.

The Committee noted BBC Sport’s statement that:

“...there will be instances where this is not possible: time restrictions may exist (for example due to a very busy sports news agenda); timings may change at short notice (e.g. due to programme overruns); and schedules will sometimes differ significantly across the UK making it impractical to provide complete information. We could not promise to give audiences full listings information with every trail or item of cross promotion on TV.”

The Committee was aware that in the cases cited by the complainant it was not a question of a late change in timing. Trustees understood that there could be a number of planned scheduling permutations as the BBC in different parts of the UK sought to serve

their audiences most appropriately. The Committee recognised that a verbal reference to several different transmission times might be undesirable, but it felt strongly that BBC network programmes exist to serve all parts of the UK and that it was for the BBC to ensure that broadcast information about transmission times was duly accurate. Trustees considered that there had been a breach of the Accuracy guidelines in the six cases highlighted by the complainant.

The Committee accepted that there had been no intention to misinform the audience and recognised that the later scheduling of *MOTD* in Scotland would be familiar to many Scottish viewers. The Committee welcomed the BBC's wish to point audiences to more upcoming sports coverage but was clear that that must be achieved in a way that was duly accurate for viewers across the UK.

**Finding: Upheld**



# Margaret Thatcher: The Authorised Biography, BBC Radio 4, 2 May 2013

## 1. Background

Radio 4's *Book of the Week* consists of serialised book readings, featuring works of non-fiction, biography, autobiography, travel, diaries, essays, humour and history. Each week extracts from a selected book are read over five episodes broadcast daily on weekdays. The fifteen-minute episodes are broadcast in the morning at 9.45am and repeated at 12.30am the following day.

This *Book of the Week* was the serialisation of Charles Moore's authorised biography of Margaret Thatcher, following her death on 8 April 2013. The first four readings coincided with the immediate run up to the Local Government Elections in England and Wales and polling day itself - 2 May 2013.

## 2. The complaint

The complainant said that, by choosing to broadcast this *Book of the Week* during the week of the local elections, the BBC had breached its Election Guidelines and Editorial Guidelines on Impartiality. He said it would have been possible to avoid doing so by delaying the broadcast by a week.

### Stages 1 and 2

The complainant received replies to his complaint at Stage 1 from BBC Audience Services, which included a response from Radio 4. The complaint was not upheld by the Editorial Complaints Unit at Stage 2 of the complaints process.

### Appeal to the Trust

The first allegation was that the first four readings from the *Book of the Week* which serialised the authorised biography of Margaret Thatcher influenced the outcome of the Local Government Elections on 2 May 2013, particularly episode 4 which was broadcast on polling day itself.

The second allegation was that the BBC made a deliberate decision to replace the book originally planned to feature on five consecutive weekdays starting on Monday 29 April 2013 with the authorised biography of Margaret Thatcher. The complainant said that the BBC could have delayed the broadcasts by a week, to a time when it would have been impossible for them to influence the outcome of the May 2013 local elections.

The third allegation was that the Editorial Complaints Unit did not properly determine the complaint because it never finalised its provisional finding.

## 3. Applicable Editorial Standards

The full editorial guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The sections on Impartiality (Section 4) and Politics, Public Policy and Polls (Section 10) are relevant to this appeal. The Election Guidelines for May 2013 are available at <http://www.bbc.co.uk/editorialguidelines/page/mayelectionguidelines2013#1-introduction>.

#### 4. The Committee's decision

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

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

**Point (A) – Regarding the allegation that the four readings from the authorised biography of Margaret Thatcher broadcast as Radio 4's *Book of the Week* on 29 April to 2 May 2013 influenced the outcome of the Local Government Elections on 2 May 2013 particularly episode four broadcast on polling day itself.**

**Point (B) – Regarding the allegation that the BBC made a deliberate decision to replace the *Book of the Week* originally planned for broadcast on five consecutive weekdays starting on Monday 29 April 2013 with the authorised biography of Margaret Thatcher when it could have delayed the broadcasts by a week to a time when it would have been impossible for them to influence the outcome of the May 2013 local elections.**

The Committee noted the circumstances and time frame in which Radio 4 agreed to broadcast readings from Charles Moore's biography for its *Book of the Week*. It noted that the BBC began negotiating with the publishers when Baroness Thatcher's death was announced on 8 April 2013 and that the *Daily Telegraph* had exclusive serialisation rights and began publishing extracts from Margaret Thatcher: The Authorized Biography on Friday 19 April 2013 – four days before its official publication on Tuesday 23 April 2013. It also noted that broadcast rights for the BBC were not available until the week beginning 29 April 2013 because of the *Daily Telegraph's* exclusive deal, and Radio 4 began serialising the biography as its *Book of the Week* at the earliest possible opportunity that its broadcast rights allowed.

The Committee noted that the complainant first contacted the BBC on Friday 26 April 2013, three days prior to the broadcasting of the book. The complainant alleged that the forthcoming four broadcasts of *Book of the Week* up to and including 2 May 2013 would not be balanced and would influence the outcome of the local elections on 2 May 2013 and requested that the broadcasts be delayed to a time when the political aspect would have no significant result.

The Committee noted that BBC Audience Services responded to the complainant on Tuesday 30 April 2013 incorporating the following response from Radio 4:

"Charles Moore's new biography of Margaret Thatcher, published very recently, is the first fully authorised biography of one of the most significant British political leaders of the last century. As such, it is an important work and we strongly believe it should be made available to the BBC Radio 4 audience to sample upon publication, when extracts were also available in other media... Our programmes during the current Election Period are of course subject to some restrictions ... as the adaptation of the book is not concerned with political matters of today or any issues at stake in the current local elections, and does not draw any comparisons between policies of the past and present, we therefore concluded that its broadcast is not prevented by the Election Guidelines."

The Committee noted that on receipt of this pre-broadcast complaint the network reviewed its decision-making processes and the matter was discussed with the Chief Adviser, Politics and the Controller, Radio 4 spoke to the Director, Radio. It also noted that during this review process, episode four of the *Book of the Week* readings was particularly singled out for consideration against the BBC's Election Guidelines. The Committee also noted that the Director, Radio referred the matter to the Director of Editorial Policy and Standards before deciding to proceed with the broadcast of the biography.

The Committee then noted that on receipt of this response to the pre-broadcast complaint, the complainant contacted the BBC again on Tuesday 30 April 2013 to request the postponement of the episode of *Book of the Week* to be broadcast on polling day itself.

The Committee noted that the BBC went ahead with the broadcast. The serialisation covered events including the following (as described in presentation announcements):

- Episode 1: Monday 29 April 2013 (repeated 00.30 Tuesday 30 April 2013) – “In this first extract it's 1941 and 15-year-old Margaret has just sat her school certificate.”
- Episode 2: Tuesday 30 April 2013 (repeated 00.30 Wednesday 1 May 2013) – “Today, 23-year-old Margaret Roberts is living and working in Essex but life is set to change following her selection as candidate for Dartford.”
- Episode 3: Wednesday 1 May 2013 (repeated 00.30 Thursday 2 May 2013) – “In today's extract, Margaret Thatcher's political ambitions are almost derailed in 1971 by the issue of school milk. First though, we return to 1952 when Margaret Thatcher was newly married to Dennis.”
- Episode 4: Thursday 2 May 2013 (repeated 00.30 Friday 3 May 2013) – “In today's extract, Mrs Thatcher enters Downing Street as Britain's first woman Prime Minister following the Tory victory in the 1979 General Election.”

The Committee noted that *Book of the Week* has previously serialised books about politicians or books that dealt with an aspect of political history, including *Decline and Fall: Diaries 2005 to 2010* – the second volume of former Labour Minister Chris Mullin's diaries (broadcast September 2010); *Climbing the Bookshelves* – Shirley Williams reading her autobiography (broadcast October 2009); *A View from the Foothills* – an adaptation of Chris Mullin's first diary as a Minister (broadcast March 2009); and *Speaking for Myself* – Cherie Blair telling her story in her own words (May 2008).

The Committee noted that the BBC's Election Guidelines:

“...apply to any programme or material intended for UK audiences, covering any aspect of the elections and to output areas within which elections are taking place.”

The Committee agreed that Radio 4 is a network radio station and covers an area within which elections were taking place. However, having reviewed the broadcast extracts the Committee agreed that the episodes did not provide any coverage of the local government election campaigns and so the BBC's Election Guidelines were not engaged in this case.

The Committee noted the Impartiality Editorial Guideline 4.4.24, which states that:

“Special considerations apply during the campaigns for elections and referendums and, in some cases, the period running up to campaigns will involve greater sensitivity with regard to due impartiality in all output genres.”

The Committee agreed that this guideline required Radio 4 to show greater sensitivity with regard to due impartiality in the output genre of Radio 4’s *Book of the Week* during the May 2013 Local Government Election campaign.

The Committee noted the steps Radio 4 took to seek to ensure that the broadcasting of Margaret Thatcher: The Authorized Biography in the week of local government elections on 2 May 2013 complied with the BBC’s Editorial Guidelines. It noted Radio 4’s decision to commission the biography as *Book of the Week* was not taken until after the production team had visited the publishers, looked at the manuscript and discussed the editorial issues raised. It noted that Radio 4 judged the adaptation against the BBC’s Election Guidelines and concluded that, because it dealt with the early years of Baroness Thatcher’s life and political career, ended with the Falklands Conflict and stopped short of local-government-related political subjects like the poll tax, the material could not be regarded as dealing with local election matters. The Committee further noted that Radio 4 had also judged that the material was anecdotal in nature; it did not deal with matters of policy and any policy references had no contemporaneous resonance with the May 2013 local government elections.

The Committee considered the steps, outlined above, that Radio 4 had taken to ensure the broadcasting of Margaret Thatcher: The Authorized Biography in the week of local government elections on 2 May 2013 complied with the BBC’s Editorial Guidelines.

The Committee also noted that *Book of the Week* seeks to achieve due impartiality over a relatively lengthy period of time and that over the years it has featured readings about a number of individuals in the world of politics.

The Committee noted that Baroness Thatcher was a very strong political figure and that her death created a renewal of public interest in, and comment about, her career. It also understood why the publication of Charles Moore’s biography, announced on the day of her death, and the subsequent serialisation deal with Radio 4 meant the BBC wanted excerpts of the biography made available to its audiences at a time when Margaret Thatcher’s life was being judged and assessed widely throughout the media. The Committee agreed that the BBC had approached with care the editorial decision to broadcast Margaret Thatcher: The Authorized Biography as its *Book of the Week*.

The Committee considered that the BBC had made a very finely balanced editorial judgement when it decided to broadcast this *Book of the Week* in the week of the Local Government Elections in May 2013 and it understood why the complainant felt uncomfortable about the BBC broadcasting it at a politically sensitive time.

However, the Committee agreed that the BBC had demonstrated that it had properly considered the Editorial Guidelines before broadcasting the serialisation. It also agreed that the material was anecdotal in nature and that it had no contemporaneous resonance with the May 2013 Local Government Elections. Therefore, the Committee agreed that the Guideline requirement for due impartiality had been met.

**Point (C) – Regarding the allegation that the Editorial Complaints Unit did not properly determine the complaint because it never finalised its provisional finding.**

The Committee noted the complainant had confirmed in his appeal letter that he had received the provisional ECU finding in the form of a letter attached as a Word document to an email on 6 September 2013. It further noted that this letter stated:

“As I explained in my earlier email ... this is a provisional finding, and you have the opportunity to comment on it further before it is finalised ... I'd be grateful if you would let me have your comments by 20 September.”

He also confirmed that this was followed by an email on 26 September stating that in the light of no further comment from the complainant the ECU was finalising its finding. The Committee also noted that when the ECU finalises its finding, it does not send the finding again (unless it had decided it had cause to change it) but simply sends an email saying it has finalised the provisional finding which in this case read as follows:

“As we have received no further comments from you I am finalising the ECU finding in respect of this complaint on the basis of my letter of 6 September.”

The Committee agreed that the complainant had been correctly informed that the provisional finding had been finalised and that the appeal had been determined but noted that the complainant had not found the language clear.

The Committee concluded that whilst it was always open to a complainant to ask the ECU for clarification it might be helpful if the ECU could review the wording it uses to explain that a provisional finding had been finalised without change.

**Finding: Not upheld.**

## Newsnight, BBC Two, 23 January 2013

### 1. Background

This edition of *Newsnight* featured extended coverage assessing reaction to David Cameron's announcement that there would be a referendum on the UK's membership of the EU. The programme included interviews with people affected by Britain's relationship with Europe including Peter Carroll who, as a part owner of a road freight business, provided "a haulier's view".

### 2. The complaint

The complainants alleged that the programme was in breach of the BBC's Editorial Guidelines because it did not alert viewers to the fact that Mr Carroll was a former Liberal Democrat councillor and former parliamentary candidate. This was part of a larger complaint brought by the complainants claiming bias in the programme.

#### Stages 1 and 2

The complainants received replies at Stage 1 from the Acting Editor of *Newsnight*. The issues raised by the complainants were not upheld by the Editorial Complaints Unit at Stage 2 of the complaints process.

#### Appeal to the Trust

The complainants appealed to the Trust reiterating their original complaint. The Trust Unit decided the complaint should not proceed to appeal. The complainants then asked the Editorial Standards Committee (ESC) to review this decision. In its review the ESC agreed to take on appeal one part of the complaint only, namely that the programme had not properly signposted Mr Carroll's status and had therefore misled the audience.

Not every argument is noted in this brief summary.

The allegation is that the contributor's appearance on the programme was misleading in that a demonstrable Liberal Democrat activist was positioned as an ordinary contributor, and that presenter Kirsty Wark had said in her introduction to the section that featured him, "before we hear from the politicians again", thus providing a direct indicator that none of the three contributors were politicians.

### 3. Applicable Editorial Standards

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The section on Accuracy (Section 3) is relevant to this appeal.

### 4. The Committee's decision

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

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

The Committee began by noting that the complainant had contacted the Trust Unit, in response to the circulation of the background paperwork for this appeal, to say that he was not going to take his complaint further. The Committee further noted that in doing so he had referred solely to the part of his complaint that the Committee had already determined did not qualify for consideration by Trustees. The Committee agreed that, having already made a decision to consider the remaining part of the complainant's appeal, it would proceed to do so, notwithstanding the complainant's objections, because it raised a matter of substance that the Committee wished to consider.

The Committee noted the full transcript of the part of the programme that is the subject of the complaint, including the introduction to the segment by the presenter:

**Kirsty Wark:**

Well, before we hear from the politicians again, we went back to some of those who we've talked to on *Newsnight* recently about how Britain's relationship with Europe affects their lives, to find out what they made of the Prime Minister's speech.

**Peter Carroll:**

My name's Peter Carroll and I'm a part-owner of a small-to-medium-sized business, operating in road freight in the UK and across Europe. Well, my first reaction was "do the politicians really understand how high the stakes are?" With half our exports going from the UK to Europe if we get this wrong, we could consign ourselves to being a third world economy within ten years. So the stakes are enormous. The thing that we want is fairness. If drivers based in Britain work to the same level of discipline, control and regulation as they do in other countries, at least it's fair. What we would be worried about is that you may end up in a situation where different countries are working to different drivers' hours rules, different safety standards on vehicles, different employment regulations, and there's a danger then that it's not fair and we can't compete. It feels to us in the business community sometimes as if the politicians are constantly finding something else to tackle, some other issue, whether it be gay marriage, Europe, NHS reorganisations, all very important subjects and issues, but there's one thing, more important at the moment than all of those, and it's this: concentrate 100% on getting the UK economy growing, because unless we have a growing economy, we're going nowhere.

The Committee noted the Independent Editorial Adviser's summary of the interviewee's political career as at the date the programme in question was aired. It noted that he is the part owner of a haulage business and founder, organiser of and spokesperson for FairFuelUK, a campaign group seeking a cut in fuel prices, among other interests. Although he was a Liberal Democrat councillor until 2011 and had been a parliamentary candidate for that party in three general elections – most recently in 2010 – the Committee noted that the interviewee had confirmed that the above was accurate to the Independent Editorial Adviser and that, at the time of the programme, he was not active in campaigning or seeking office.

The Committee considered whether it was necessary to provide information regarding the interviewee's active political past or Liberal Democrat sympathies so that the *Newsnight* audience could judge his status.

The Committee noted the complainants described the contributor as "an active supporter" of the Liberal Democrat Party and as a "Liberal Democrat activist".

However, the Committee considered that his political affiliations were insufficiently significant at the time of the programme's broadcast to require signposting.

The Committee agreed that the interviewee's comments were not of a party political nature; rather the Committee considered that they represented a legitimate point of view from the haulage industry.

The Committee considered that the interview did not require additional signposting to comply with the Editorial Guidelines.

The Committee considered that the presenter's introduction was duly accurate and was not misleading. The Committee therefore concluded that the programme did not breach the Accuracy guidelines.

**Finding: Not upheld**



# Rejected Appeals

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

## Today Programme, Radio 4, 23 May 2013

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 on 11 September 2013 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about a report by Kevin Connolly on the *Today* programme in which the prospects for renewed peace talks between Israel and the Palestinians were discussed during a visit to the region by the US Secretary of State John Kerry.

The complainant asked for three issues to be considered:

1. He considered that the following sentence in the commentary was offensive because, in his view, it incorrectly implied that Israelis celebrate fighting in the region which had caused the deaths of thousands of people:

"Last week Palestinians marked with protests and with rallies the moment which in 1948 helped to define the modern Middle East. They call it the Nakba – the catastrophe. Israelis celebrate the same sequence of manoeuvres in the United Nations and fighting in the Holy Land as Independence Day."

2. The complainant disputed the following sentence of commentary:

"It was diplomacy as a zero-sum game. Israel, it seemed to the Arab world, won because the Palestinians lost."

The complainant considered that this incorrectly implied that Israel coming into existence meant that there could not also be a Palestinian state.

3. The complainant said that the item gave the impression that the area of the West Bank covered by settlements is expanding. He said that while the numbers of people living in the settlements was increasing, "the word expansion implies growth in area and that is what most people have been falsely led to believe by this and other BBC reports".

The complainant argued that more homes were being built in the communities that would be in Israel in any peace agreement and that this was consistent with the line taken by John Kerry at a recent press conference.

### The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit.

The Adviser and an Independent Editorial Adviser listened to the report. The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The appeal was considered against the Editorial Guidelines on Accuracy.

The Adviser considered the allegation that the commentary gave the impression that Israelis were celebrating the fighting of 1948.

The Adviser noted the response that the complainant had been sent at Stage 2 in relation to this point. In his letter of 12 August the ECU's Complaints Director had written:

"I would accept there is a risk that the second line, if considered in isolation from what surrounds it, might give a misleading impression of Independence Day. I don't however think that is true when it is judged in the context of the passage as a whole, which is how listeners would have heard it.

"It seems to me that the reporter set out to convey the distance between Israeli and Palestinian perspectives on the creation of the state of Israel, as a means of introducing the current state of the peace process and the prospects for movement. In doing so, he focussed on the circumstances leading up to statehood, and it does seem to me that this was a reasonable and accurate way to describe the tumultuous era which immediately preceded it.

"...I certainly don't agree that the phrasing imparted the sense that Israelis celebrate conflict for its own sake, or the unhappiness of the Palestinians. I don't think that this is what the passage was about – it was not an in-depth investigation into how Israelis remember independence, but a brief reference to differing perspectives on those events while setting the scene for a report on a peace process which is 'hopelessly stalled'."

The Adviser agreed that the phrasing was another way of reflecting the outcome of a war which the Palestinians lost and the Israelis won. So for one side, the Palestinians, it was perceived as a catastrophe and for the other side, the Israelis, it marked their independence. The Adviser considered that, had this been an item about the war itself, and more specifically about how each side remembers 1948, then greater context and detail would have been expected. But this was an item about a contemporary news event.

The Adviser noted the complainant's assertion that Kevin Connolly's comment was "the same type of offensive comment" and should be seen in the context of what Jim Muir said of Israelis in his report (on the BBC website the day before) about Syria. She noted the complainant's allegation that Jim Muir had said:

"...it is hard to imagine Israel not being happy to see' Muslims killing each other in Syria."

The Adviser noted the quote from Jim Muir's report had been taken out of context. The reporter had been referring to an assertion by a well-placed Shia observer that Israel was "laughing and happy" to see Hezbollah fighters dying in the Syrian conflict. The fuller context was:

**SHIA OBSERVER:**

Israel's interest is to see the civil war continue and Hezbollah sucked in and massacred as it has been in the past few days, when they've lost 40 fighters. It's a grinding machine, and Israel is laughing and happy.

**JIM MUIR:**

Indeed, put like that, it is hard to imagine Israel not being happy to see what it regards as extremists and terrorists from both the Shia and Sunni sides of the sectarian divide at each other's throats in Syria.

On neither occasion did the Adviser consider that the BBC had suggested that Israelis did not care about peoples' suffering. She therefore could not agree with the premise in the complainant's appeal that "the impression being given by BBC journalists that they celebrate peoples' suffering is offensive". Therefore, on this first point of appeal, the Adviser found that the complaint did not have a reasonable prospect of success and should not be put before Trustees.

Next, the Adviser considered the second point of the appeal – the complainant's assertion that the following section of script inaccurately implied that the establishment of a State of Israel meant that a Palestinian state could not exist:

"It was diplomacy as a zero-sum game. Israel, it seemed to the Arab world, won because the Palestinians lost".

The Adviser noted the complainant's assertion that it was the Arab rejection of Resolution 181 that resulted in there being no Arab state alongside a Jewish state.

The Adviser noted, as did the ECU, that the comment was clearly characterised by the reporter as how it "seemed" to the Arab world. It was not expressed as a statement of fact, but a summary of a viewpoint. The Adviser considered it was a duly accurate summary of how the Arab world considers the outcome of 1948. Therefore, on this second point too, the Adviser considered the appeal did not have a reasonable prospect of success and should not be put before Trustees.

Finally, the Adviser considered the complainant's third point; that the BBC misled viewers into thinking that Israel was building new settlements, rather than just expanding the numbers in existing settlements.

She noted the relevant extract from the news report:

"Under Benjamin Netanyahu Jewish settlements in the occupied West Bank have expanded."

And a little later:

"The Palestinian leadership headed by Mahmoud Abbas says there can't be peace talks until that settlement expansion stops."

The Adviser noted the complainant's contention that the increases were in existing settlements and in areas which were likely to be included within Israel under any future two-state agreement:

"By saying that the settlements were still expanding Connolly gave the impression that the number of settlements in the West Bank and/or the area under settlement

was still expanding and that this was causing the window of opportunity for a peace agreement to close, when all that is happening is that more homes are being built in the communities that would be in Israel in any peace agreement.”

The Adviser noted the statistics cited in an article for *Foreign Policy* which were based on recent Israeli election data (and quoted also by the ECU at Stage 2):

“Our main goal was to see what’s happening right now: Are those towns beyond the security fence still growing? The oft-repeated argument that ‘the window for peace is closing’ depends largely on the belief that the settlements beyond the fence are expanding, meaning the number of Israelis who may resist a final agreement is presumably growing as well.

“Israeli election results data provide an important insight into these elusive facts on the ground, because trends in the size of the voting population can be a good proxy for trends in overall population. According to electoral data, there has been significant recent growth all throughout the West Bank – on both sides of the fence. More specifically, the number of Israelis over the age of 18 (eligible voters) who live beyond the Green Line and outside the settlement blocs has increased by 17 percent during Prime Minister Benjamin Netanyahu’s current term in office.”

The Adviser noted that the brief references in the script to settlement “expansion” didn’t go into any greater detail as to what that comprised and nor in the Adviser’s view was it necessary to do so. She noted and agreed with the response the complainant had been sent by the Complaints Director, which stated:

“The ‘expansion’ of the settlements under Netanyahu was referred to in the context of a broader discussion of the peace process during the visit of the American Secretary of State. It is a fact that new building in settlements has taken place during Netanyahu’s time in government, despite opposition from the US and others, and the widely held view that such activities damage the prospects of peace.

“‘Expansion’ in the context of this particular discussion would seem to me to extend to the sort of activity which was perceived by the international community as growth – including, for instance, population expansion and the building of new homes within existing boundaries.”

The Adviser concluded that the report was duly accurate in how it reflected the recent level of settlement activity. Therefore, on this final point too, the Adviser considered the appeal did not have a reasonable prospect of success.

Therefore, for all the reasons set out above, the Adviser considered the appeal should not proceed to be put before Trustees.

### **Request for review by Trustees**

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

He repeated points made on appeal and also made the following points in his request:

1. He noted the ECU Complaints Director's statement that the report was not "an in-depth investigation into how Israelis remember independence", and said that he was not suggesting that it was. However, he felt that Kevin Connolly "could have said simply that the Israelis celebrate the result of that fighting as Independence Day. It would have been a shorter sentence and would not have had such an offensive meaning to the listener.

He said that the strong impression given both by Kevin Connolly's statement, and also Jim Muir's report published on the BBC website the preceding day, which was also addressed in the appeal, was that "Israel is happy when their Arab neighbours suffer", and nothing could be further from the truth.

2. Regarding Kevin Connolly's statement that "It was diplomacy as a zero-sum game. Israel, it seemed to the Arab world, won because the Palestinians lost", the complainant said that this was not attributed to the Arab world, and had been stated without qualification.
3. He noted that Mahmoud Abbas had previously participated in peace talks even as numbers living in settlements grew at a far faster rate than it had under Netanyahu in his current term.
4. He acknowledged it was true that there was some expansion of the number of settlers living beyond the security fence, but said that:

"Any that moved there know that in any peace agreement they will have to move. Those that chose to live there are already amongst the hard politically hard right, and they won't have become more resistant to a peace agreement than they already are by moving into such existing settlements."

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

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the *Today* broadcast of 23 May 2013.

The Committee noted the complainant's concern that a report by Kevin Connolly on the *Today* programme included a remark which he considered was offensive and misleading, and that this was a similar type comment as a comment made by Jim Muir in a BBC Online report published the previous day, alleged by the complainant to be offensive and misleading.

The Committee considered the context of the comments and noted the response of the ECU's Complaints Director at Stage 2:

"I would accept there is a risk that the second line, if considered in isolation from what surrounds it, might give a misleading impression of Independence Day. I don't however think that is true when it is judged in the context of the passage as a whole, which is how listeners would have heard it.

The Committee considered that if it took the appeal it would be likely to agree:

- with the view of the Trust's Adviser that the report had not suggested that Israelis did not care about peoples' suffering. That being the case, the Committee did not believe there was any reasonable prospect of success for the appeal on the issue of Offence (or Accuracy)
- that in the context of a contemporary news event, it was not necessary to provide a greater degree of context than that provided in the report about the events of 1948 in order for the report to be duly accurate
- that the report was also duly accurate in the way it reflected the recent level of settlement activity.

For these reasons the Committee agreed that the appeal had no reasonable prospect of success.

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

## **'Court Declares James Duff 'vexatious litigant'', BBC News Online, 13 June 2013**

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 contacted the BBC Trust on 26 August 2013, saying that he was unhappy with the response received at Stage 2 from BBC Scotland's Head of Public Policy and Corporate Affairs.

The complainant's appeal concerns an article published online on 13 June 2013. The article can be found here:

<http://www.bbc.co.uk/news/uk-scotland-south-scotland-22889033>

The article reported the outcome of a court case in which three judges in the Court of Session declared the complainant a "vexatious litigant". The complainant disputed elements of the court's finding and believed he should have been consulted to give his side of the story before the article was published. He also appealed against the Court's judgement and stated:

"...my complaint to the Lord President resulted in a special hearing on 3rd July 2013, which resulted in one of my complaints being reinstated because it could not be dismissed without the other four grounds of appeal being held..... The BBC has failed to correct their website and the article is still there and gets a lot of hits, this article is misleading the public, considering the decision 3 July 2013."

The Head of Public Policy and Corporate Affairs, BBC Scotland, responding at Stage 2, stood by the original report and stated:

"In reporting such a story, on a court decision, there is no requirement on the BBC to include a response from the person against whom the court declared."

### **The Trust Unit's decision**

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and an independent editorial adviser also read the article in question and the Opinion of the Court.

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

The complainant first contacted the BBC on 13 June 2013. He stated, "I object to the fact that I was not consulted to my side of the story."

The Adviser noted that BBC journalists are required to work within the law as it relates to the reporting of legal proceedings. She noted and concurred with BBC Scotland's Stage 2 response that in reporting a court's decision "there is no requirement on the BBC to

include a response from the person against whom the court declared". Instead, she considered that the BBC was required to report the decision of the court accurately.

The Adviser considered the complaint against the BBC guidelines on Accuracy and Fairness which can be found at [www.bbc.co.uk/guidelines/editorialguidelines](http://www.bbc.co.uk/guidelines/editorialguidelines).

The Adviser noted that the article described the complainant as "a man who raised repeated court actions against Scotland's top law officer and Dumfries and Galloway police chiefs", as well as "claims against ministers, the Law Society and Dumfries and Galloway Council". The article reported that three judges in the Court of Session had found he had raised proceedings in a "habitual and persistent manner" and that the opinions of the courts involved had been "almost universally unfavourable" to him.

The Adviser noted that the article had quoted at length from the Opinion of Lady Paton (one of the three judges in the case) including her comments that, "In our opinion, the circumstances of the litigations confirm and support the petitioner's contention that the respondent is indeed a vexatious litigant"; however, "the order which we pronounce does not prevent access to the courts but imposes a sifting mechanism which in the respondent's case is, in our view, entirely justified".

The Adviser noted the Opinion of the Court, which detailed 15 cases brought by the complainant. The ruling referred to several instances "where an action was dismissed or an appeal refused, the respondent raised a similar action against the same defender. We are satisfied that the respondent has raised actions in a habitual and persistent manner from 2002 to date... On the information available to us, none of the actions raised by the respondent has resulted in the respondent being granted the remedies he sought."

The Adviser noted Lady Paton's comments that:

"In this petition, the respondent is noted as having raised actions against inter alios the Lord Advocate, the Chief Constable of Dumfries and Galloway Constabulary, a former trustee in sequestration, and a local authority (Dumfries and Galloway Council). In these actions the respondent has made repeated allegations of corruption, fraud, blackmail, pressure, collusion, fabricated police reports, police officers perverting the course of justice, a cover-up, a vendetta against him, and conspiracies. The actions and ensuing appeals have been dismissed and awards of expenses made against the respondent. The respondent's reaction has been to fail to pay any expenses; to leave some actions in a procedural limbo; and in several instances to reactivate old proceedings or to raise another action against the same defender in broadly similar terms as a previously unsuccessful action. Considerable time, funds, and resources have been devoted to dealing with the respondent's wholly unsuccessful actions. In our opinion, the circumstances of the litigations confirm and support the petitioner's contention that the respondent is indeed a vexatious litigant."

The Adviser considered that the article was clear in attributing its comments and precise in its quotations. She could not find evidence of any material inaccuracy that could lead to a successful claim of unfairness to the complainant.

The Adviser noted that the complainant believed there were discrepancies in Lady Paton's published Opinion; however, she considered that this was not a matter for the BBC. Should the complainant successfully challenge the Opinion of the Court, then it would be for BBC Scotland to consider whether to report on the issue.



Turning to the complainant's claim that the BBC had not amended its online article after the decision of the Court to reinstate one of the complainant's actions, the Adviser noted the complainant's comments that a hearing on this action (an appeal) was due to be held in November. It was the understanding of the Adviser from the paperwork provided by the complainant that the Court's verdict pertaining to Mr Duff's status as a "vexatious litigant" had not changed. She also noted the comments of BBC Scotland's Head of Public Policy and Corporate Affairs that "should there be developments on that front, I would anticipate that our news teams would consider those developments in the context of future news agendas". The Adviser concluded that there was insufficient evidence to support the complainant's claim that this article was misleading. She therefore considered the appeal did not have a reasonable prospect of success and should not proceed to be put before Trustees for consideration.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal and stated his reasons as follows:

1. It was not up to the Senior Editorial Complaints Adviser to decide whether this complaint had a reasonable prospect of success, and also the Adviser did not say how she had reached that decision.
2. A Judge's opinion was discredited. It was based on misleading opinion supplied to her and this was proven by the decision to reinstate a case.

The BBC still had the report on their website, which meant that people were then likely to go to the court site and be misled by the opinion and so the BBC had a duty to publicise that and let the public decide.

The complainant sent a further letter on 29 October 2013 to support his request for a review. He enclosed a minute of Proceedings dated 23 November 2011 and pointed out that the respondent had tried to have his appeal on two occasions dismissed as unstateable, and failed.

He said that BBC Scotland had ignored information which had been brought to their attention regarding the Opinion (18 May 2012) of three judges appointed to hear his Grounds for Appeal, and which he said was flawed and incompetent. He believed the BBC's reporting had been "all one-sided".

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

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

The Committee acknowledged that the complainant did not feel he had been given adequate reasons for the decision by the Senior Editorial Complaints Adviser not to proceed with his appeal.

The Committee noted that the complaint had been considered against the BBC Guidelines on Accuracy and Fairness. The Senior Editorial Complaints Adviser had explained that BBC journalists are required to work within the law as it relates to the reporting of legal proceedings; she had noted and concurred with BBC Scotland's Stage 2 response that, in reporting a court's decision "there is no requirement on the BBC to include a response

from the person against whom the court declared"; instead, she considered that the BBC was required to report the decision of the court accurately. The Committee agreed that court reports should be accurate and fair.

The Committee acknowledged that the complainant believed there were discrepancies in Lady Paton's published Opinion, but agreed with the Trust's Adviser that this was not a matter for the BBC. If the complainant were to successfully challenge the Opinion of the Court, then it would be for the BBC to consider whether to report on the issue. The Committee noted that BBC Scotland's Head of Public Policy and Corporate Affairs had stated at Stage 2 that

"...should there be developments on that front, I would anticipate that our news teams would consider those developments in the context of future news agendas."

The Committee acknowledged the complainant's concerns about the continued presence of the Online article, originally published on 13 June 2013, but did not believe evidence had been presented which would be likely to lead it to conclude that BBC News reporting was in breach of Guidelines on Accuracy or Fairness.

The Committee concluded it would be likely to find that the Senior Editorial Complaints Adviser had given adequate reasoning for reaching her decision that there was no reasonable prospect of success for the appeal.

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

## Pop! The Science of Bubbles, BBC Four, 9 April 2013

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 on 29 October 2013 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about *POP! The Science of Bubbles*. He said that the explanation given in the programme about surface tension – and in particular about the molecular inter-reaction underlying the phenomenon – was not accurate. He added that, given the paucity of physics teachers in schools nowadays, it was particularly important for the BBC to get its science right.

He said the explanation of the science of surface tension given in the programme would have confused viewers and that the public was not being presented with sound elementary science. He added that "Physics has been made incomprehensible to most people by too much incorrect presentation".

In his original complaint, he said that the programme stated that the shape of the droplet was caused by water molecules being attracted to each other. He stated that "the whole subject depends on surface tensions" and stated that in fact the shape of the droplet was formed as a result of molecules repelling each other. At Stage 1, he received a response from BBC Audience Services which included comments from the physicist who had presented the programme.

### The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings.

The correspondence was reviewed by the Trust Unit and an independent editorial adviser watched the programme.

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

She considered the Editorial Guidelines that were relevant to the complaint were those for Accuracy which can be found online at:

<http://www.bbc.co.uk/editorialguidelines/guidelines>

The Adviser noted that the programme had considered the shape of a drop of water and had discussed the surface tension of water by describing the electrical charges of water molecules and how they caused other water molecules to behave. The complainant had contacted the BBC stating that the description had not taken account of the effect of atmospheric pressure. The Adviser noted the response at Stage 1, which included the following comments of the programme's presenter:

"You've written to us stating: 'Consider water in a glass. We know that air exerts a force on the surface of about 100,000 Newton per square metre. Thus in the interior molecules must repel each other, not attract. The surface layer has to repel the molecules in the air, so they in turn need experience an outward force

from those inside, they are not pulled inward. No explanation is given for the tension in the surface layer’.

“This comment confuses two separate effects in molecular interaction. Molecules are held together by electrostatic forces. Opposite charges attract and equal charges repel. In liquid water, the water molecules are a shallow V-shape, and the hydrogen at each end has a slight positive charge while the oxygen in the centre (at the kink) has a slight negative charge. The position of the molecules in the liquid is a result of a balancing of the negative charges attracting the positive charges in other water molecules, and the repulsion between equal charges (so the oxygen in one water molecule will repel the oxygen in another water molecule). The molecular spacing reflects this balance. The repulsive forces stop the molecules getting too close, but the attractive forces keep them from drifting off completely. If there were no attractive forces in water, it would not stay in the glass – molecules would just float away. This does not happen, so there must be attractive forces present. If a water molecule pulled a short distance away from other water molecules, over a short range the average attractive force pulling it back to the other water molecules is very strong. So water molecules are pulled inwards towards the bulk. At the surface, there is a strong attractive force on one side but not the other, and this is why molecules are pulled back in towards the bulk of the water. This is the attractive force which contributes to surface tension.

“To reiterate the central point, which you can see for yourself, if there were no net attractive force between water molecules, they would not stay next to each other. It can clearly be seen that water molecules tend to form beads, as molecules are pulled inwards towards the bulk. This is hydrogen bonding, the strong attractive force between different parts of the polar water molecules. This strong bonding explains surface tension.”

The Adviser noted that the presenter was a reputable physicist and oceanographer based in the Institute for Sound and Vibration Research at Southampton University whose area of specialism is water bubbles.

The Adviser also noted the final Stage 2 response from the Editorial Complaints Unit – the Complaints Director had consulted a professor from Imperial College, London, who had given him further advice regarding the programme’s statements. The ECU’s response stated:

“I agree that it would have been better if [the presenter] had drawn specific attention to the interaction of molecules in the plane of the surface, since in her demonstration of surface tension in water droplets did not make it clear that molecules at the surface are pushed outwards by external pressure but held inwards by the tension in the adjacent surface molecules.”

The Adviser noted the requirement for “due” accuracy meant programme makers should take into account the expectations of its audience – in this case, she considered the likely audience would have been interested amateurs rather than experts and she noted the response of the ECU on that point:

“I think the explanation has to be judged in the context of a popular science programme aimed at a general audience rather than an audience of experts. I think it is probably inevitable that a degree of simplification is likely in any brief explanation of a relatively complex phenomenon.”

The Adviser considered the requirements of “due accuracy” which is to be adequate and appropriate to the output as well as the importance of audience expectation, in assessing this type of question (i.e. a programme meant for a general, not a specialist audience, who would expect even complex issues to be addressed in fairly simple, laymen’s terms).

She concluded that there was no reasonable prospect that the Trustees would find that this, even if somewhat simplified, explanation of surface tension, was either not duly accurate or tended to knowingly and materially mislead the audience. Therefore, she did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

### **Request for review by Trustees**

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

He said that the programme gave a supposed explanation of surface tension in terms of intermolecular forces, which was contrary to Newtonian mechanics, and would predict that matter could not exist.

He said that this explanation would have caused confusion in the minds of students at all levels, and that the arguments put forward by the BBC to justify the explanation given in the programme were unscientific nonsense.

### **The Committee’s decision**

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints 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 acknowledged the complainant’s view that the item had contained inaccuracies, and noted that the complaint had been considered against the BBC Guideline requirement for “due accuracy”.

The Committee also noted that the Complaints Director said that “it would have been better if [the presenter] had drawn specific attention to the interaction of molecules in the plane of the surface” and that he had consulted a professor from Imperial College, London, prior to issuing the Stage 2 response.

The Committee agreed with the Trust’s Adviser that the requirement for “due” accuracy meant programme makers should take into account the expectations of its audience – in this case, the likely audience would have been interested amateurs rather than experts. The Committee also agreed with the view of the Complaints Director who stated in his Stage 2 response:

“I think the explanation has to be judged in the context of a popular science programme aimed at a general audience rather than an audience of experts. I think it is probably inevitable that a degree of simplification is likely in any brief explanation of a relatively complex phenomenon.”

The Committee acknowledged that the complainant considered that the account given by [the presenter] about the shape of water droplets was seriously misleading, but was of the view that even though the explanation of surface tension given in the programme was

simplified, the Committee would not be likely to conclude that it breached the Guidelines on Accuracy.

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

## **'Why weight gain in middle age is not inevitable', BBC News Online, 24 August 2013**

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 Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint about a BBC News Online article entitled "Why weight gain in middle age is not inevitable", which featured a photograph of Prime Minister David Cameron taken on a beach in Cornwall while he was on holiday.

The complainant felt that it was a violation of the Prime Minister's privacy for the picture to have been used. He considered the photograph had been taken when the Prime Minister was in a "private setting" and considered it lacked "journalistic integrity and common courtesy".

The complainant received a Stage 1 response on 29 August from the journalist who had written the story. She wrote:

"I apologise if the photo of Mr Cameron on the beach, which appeared in many newspapers the previous day, and the article offended you.

"The article was not intended to be critical of the PM - merely a way to discuss the problem of putting on weight in middle-age and the ways in which it is possible to combat it."

The complainant remained dissatisfied and renewed his complaint on the same day. He was advised that he could escalate his complaint to the Head of Editorial Compliance and Accountability, BBC News. The complainant received a Stage 2 response on 17 September from the Head of Editorial Compliance and Accountability who did not uphold his complaint.

The complainant appealed to the BBC Trust on 26 September, saying that he was unhappy with the response received at Stage 2 and he failed "to see any legitimate purpose in intentionally using an unflattering image of a major world leader to cover a story line on weight gain".

The complainant said that he was concerned that the Head of Editorial Compliance and Accountability, BBC News, "justifies the use of a photograph she acknowledges was unflattering because the image was used by other media outlets".

He also said he was concerned that this image of the Prime Minister could be judged editorially acceptable by the BBC as it had "complete disregard for privacy, propriety and journalistic integrity".

### **The Trust Unit's decision**

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that she had carefully read the correspondence that had passed between the

complainant and the BBC. She acknowledged the strength of the complainant's feelings about this matter, but did not consider that the appeal had a reasonable prospect of success.

The Adviser noted that the complainant had raised concerns that the photograph of the Prime Minister in the online article was a breach of his privacy. She considered the complaint against the Editorial Guidelines.

She noted that the Head of Editorial Compliance and Accountability, BBC News, in her Stage 2 response, had drawn attention to the fact that the photograph of Prime Minister Cameron was "information already in the public domain", having been published in the media previously.

The Adviser noted that the photograph had been taken on a public beach in Cornwall while the Prime Minister was on holiday. The Adviser also noted that the picture showed the Prime Minister in swim-wear, standing up, and the picture was largely from the waist upwards.

The Adviser noted that the decision to use the photograph had been an editorial one and that the Head of Accountability had stated at Stage 2:

"...the point was that this picture had already been given considerable exposure in national newspapers and had sparked the very discussion which was the subject of the online piece. It seems to me that the BBC article was careful to be fair to Mr Cameron, referring to the pressures on him, the unflattering nature of beachwear and the fact that he does take exercise seriously despite the heavy demands on his time.

"This was the starting point for an interesting article which contained much solid information about 'middle-aged spread'. Editors make decisions about coverage based on experience, knowledge and expert advice amongst other things. Clearly, not all in our audience will agree with the judgements made and so what counts is that the decisions are made carefully and with clear editorial justification. It seems to me that this is the case here."

The Adviser noted the complainant stated it was wrong to use the picture on the basis that it had already been printed by other news outlets. However, she considered that was not the scenario which the Head of Editorial Compliance and Accountability had described – she had explained in the Stage 2 response that the picture had been printed elsewhere and that in turn had led to the discussion about weight gain in middle age which was the subject of the article.

While the Adviser appreciated the complainant did not agree with the decision to print the picture, she noted the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards.

The Adviser considered Trustees would be likely to conclude that the article and the use of the photograph fell within the Guideline requirements and the decision to use the picture was a matter of editorial judgement which rested with the BBC. She therefore



considered the appeal did not have a reasonable prospect of success and did not propose to put it before Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal and made the following points:

- He felt that using an unflattering picture of the Prime Minister on holiday had shown a “reckless disregard for decency, privacy and journalistic integrity”.
- He saw little fundamental difference between the BBC’s use of the picture and “the invasions of privacy and journalistic decisions that forced the closure of the News of the World”.
- His concern went “far deeper than simply this story. It goes to the heart of a culture that sees little wrong with using a position of power and influence to bring ridicule to individual members of the public. The PM is fair game on issues of state, not when playing with his children”.

### **The Committee’s decision**

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant’s letter asking the Committee to review her decision. The Committee was also provided with the BBC News Online article in question.

The Committee noted that the complainant did not accept the reasoning given by the Trust’s Senior Editorial Complaints Adviser not to proceed with the appeal and acknowledged the further points made by the complainant in his challenge.

The Committee acknowledged the complainant’s concern that, in his view, the BBC displayed a “reckless disregard for decency, privacy and journalistic integrity”. The Committee noted that the picture which was the subject of the complaint was already in the public domain before being published in the BBC News Online article, and it was taken on a public beach while the Prime Minister was on holiday with his family. The Committee also noted that the Prime Minister was a senior politician in the public eye and aware that he was in the public eye.

The Committee believed it would be likely to conclude that the use of the picture met the BBC’s Editorial Guidelines.

The Committee noted paragraph 1.5 of the editorial complaints and appeals procedures, which states:

“This Procedure is applicable to all editorial complaints including **“first party complaints”**. This is a complaint alleging that someone (“the first party”) has personally been treated unfairly, or suffered an unwarranted invasion of their privacy, in BBC content, or in the making of BBC content. **Such complaints can be brought only by the first party or by someone who has the authority to represent them.**”

The Committee noted that the complaint had not been brought by the first party, i.e. the Prime Minister, or by someone with the authority to represent him.

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

## 1700 News Bulletin, Radio 4, 18 July 2013

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 about an item broadcast in the 5pm news bulletin on Radio 4 on 18 July 2013 about the withdrawal of the party whip from Liberal Democrat MP David Ward. Mr Ward had faced disciplinary measures from his own party after making critical comments about Israel, referring to it as an "apartheid state" and questioning its future existence.

The news bulletin had referred to an earlier controversy – some months previously – when the MP had faced criticism for a comment he had made about "the Jews" inflicting atrocities on Palestinians. At the time, the MP had been criticised for the implication that all Jews were responsible for inflicting atrocities on Palestinians, rather than Jews within Israel.

The news bulletin had referred to these earlier contentious comments; however, the complainant considered that the reference had been inaccurate and, by summarising the earlier comments with the phrase: "...he accused Jews of inflicting atrocities on the Palestinians", the report had failed to capture why the remark had been deemed offensive.

The complainant appealed to the BBC Trust on 7 October 2013 after the ECU did not uphold her complaint. She complained about the following passage from the news report (relevant sentence in bold):

"The Liberal Democrat MP David Ward has had the party whip withdrawn for two months after making controversial comments about Israel. **He upset the party leadership in January when he accused Jews of inflicting atrocities on the Palestinians.** At the weekend he questioned the continuing existence of the State of Israel.

The complainant alleged that the definite article, "the" before the word "Jews", was missing from the summary of Mr Ward's comments and as a result the nature of the offence caused by his comments was distorted.

In submitting her appeal the complainant asked the Trust to consider the arguments outlined in her letter to the ECU in which she wrote:

"It made it sound as if Ward had not said anything wrong in the first place. He had. He said 'the Jews' inflicted atrocities, which implied that all Jews did. As I wrote before, those listeners who may have only a hazy grasp of the original incident, or who may have forgotten its details, could have concluded from this report that if THAT was all that Ward had said, then all the fuss right up to and including the whip withdrawal, was probably unjustified."

The complainant acknowledged that the item was broadcast a considerable time after the publication of the comments which started the row and that it was intended only as a

summary to recap what had happened as a reminder to listeners. She said this did not remove the requirement for accuracy:

“I think that after the passage of time the average listener would have only a hazy (if any) recollection of the furor. Therefore the BBC should make sure that subsequent references to this incident drive home and do not water down the crucial significance of the use of the definite article before the word ‘Jews’. If the incident is worth talking about, then it is worth doing it properly, surely.”

### **The Trust Unit’s decision**

The Trust’s Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that she had carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

An independent editorial adviser listened to the item in question as did the Senior Editorial Complaints Adviser (the Adviser) who decided that the complainant’s appeal did not have a reasonable prospect of success.

She considered the complaint against the Editorial Guideline regarding Accuracy.

The Adviser noted how the complainant framed the allegation in her initial complaint:

“What David Ward had said was that ‘the Jews’ inflicted atrocities on Palestinians. The problem was with the use of the definite article. He had made it sound as if ALL Jews were responsible. It was that which caused the offence. But your report said this: ‘he accused Jews of inflicting...’

“If he had said only that, that would have been accurate. The people inflicting the atrocities ARE Jewish. So, your report made it sound as if he was being criticised for merely speaking the truth. Whereas the problem - and the alleged reason for the whip being withdrawn - was his imprecise use of language. I think this was a bad case of inaccuracy on your part leading to misinformation.”

The Adviser noted the Stage 1b response that the news report was a succinct summary of events which had precipitated the withdrawal of the party whip.

“The report you have called into question was about David Ward having his party whip withdrawn. As we reported, this was on the back of Ward’s latest tweet which referred to ‘the apartheid State of Israel’ and questioned the continued existence of the State of Israel. We then added, for reference, that earlier this year Ward had previously caused controversy with other comments – ‘Earlier this year he talked about Jews inflicting atrocities on the Palestinians’. We didn’t go into the full details of that issue as this was simply a brief reminder of an earlier story (which we reported on at the time 5 months prior to this report) within a 15 second segment of our news summary.

“While I appreciate that Ward had said ‘the Jews...’ back in February, we were not quoting him in this July report - so this cannot be ‘a misquote’ as you believe. Indeed by our use of the term ‘he talked about...’, we feel it is clear that this is not a quote but a summary of a past event. To say ‘Earlier this year he (Ward) talked about Jews inflicting atrocities on the Palestinians’ was and still is, in our view, factually accurate. We therefore feel that the reference served its purpose which

was to remind listeners that this was the second time in recent memory that Ward had caused controversy with his comments.”

The Adviser noted too the complainant’s response that because party leaders gave as the reason for the withdrawal of the whip, Mr Ward’s imprecise use of language, “the BBC should not distort the story by misquoting the very phrase which sparked the huge controversy”.

The Adviser noted the ECU’s view:

- that the absence of the word “the” in the reference to Mr Ward’s comments in the news report did not lessen the sense of controversy arising from his statement
- that since the item did not principally concern Mr Ward’s original comments (but rather his more recent comments about the State of Israel) the extent to which listeners would have looked to the news report for a complete account of that matter would have been somewhat limited; the paraphrasing of his earlier remarks was duly accurate within the context of this particular news report
- that the bulletin carried a very real sense of the furore which the comments had caused, and (the ECU) could not therefore agree that it would have materially misled listeners into imagining that he had said nothing wrong.

The Adviser disagreed with the implication of the complainant’s allegation, namely, that it was the use of the definite article which had caused the original controversy. She noted that the nature of the row which Mr Ward’s remarks provoked was due to the MP’s reference to Jews in general, rather than explicitly restricting his criticism to those who might be held “responsible” for inflicting atrocities, namely Jews in Israel. She considered it was therefore the exclusion of the word Israel or Israeli from his comments which had resulted in him being condemned by his party for the imprecise use of language. While the Adviser acknowledged that the inclusion of the definite article in the paraphrased summary would have been a more literal rendering of what Mr Ward had said, she agreed with the ECU that the formulation of wording in the news report did not materially alter the characterisation of the nature of the original offence. Nor in her opinion did the exclusion of the definite article distort the event with the effect that listeners would have reached the conclusion that the MP had done little wrong.

The Adviser noted too, as had the ECU, that the news report which was the subject of this complaint was primarily about a more recent incident, in which Mr Ward had referred to the “apartheid state of Israel” and there would not have been any audience expectation for a more detailed account of Mr Ward’s earlier comments.

Accordingly the Adviser reached the view that the Committee would likely conclude that the news report was duly accurate and that therefore the complaint would have little prospect of success and should not proceed to appeal.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said she maintained that:

- a) “There occurred an obfuscation of the issues surrounding David Ward’s transgression”

- b) This was a breach of the guidelines on accuracy

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

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

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Complaints Adviser not to proceed with the appeal, and maintained that the news report was misleading and in breach of the Editorial Guidelines on Accuracy.

The Committee noted the ECU's view that

- a) since the item did not principally concern Mr Ward's original comments (but rather his more recent comments about the State of Israel) the extent to which listeners would have looked to the news report for a complete account of that matter would have been somewhat limited; the paraphrasing of his earlier remarks was duly accurate within the context of this particular news report.
- b) the bulletin carried a very real sense of the furore which the comments had caused, and (the ECU) could not therefore agree that it would have materially misled listeners into imagining that he had said nothing wrong.

The Committee agreed with this view and believed it would be likely to conclude that the news report met the Guideline requirements for due accuracy.

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

## The Nolan Show, BBC One Northern Ireland, 5 June 2013 & The Nolan Show, BBC Radio Ulster, 6 June 2013

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 on 24 September 2013 following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about an interview with Michael Barrymore on *The Nolan Show*. The programme was originally broadcast on BBC One Northern Ireland on 5 June 2013 after the watershed and subsequently repeated in an edited form on BBC Radio Ulster the following morning at 9.00 a.m.

The complainant objected to a comment, "close your legs", made by Michael Barrymore to a member of the audience in the live television interview which he considered offensive. He was also concerned about Michael Barrymore's admission that he had taken drugs, and his comment that he had enjoyed a good sex life with his wife despite being gay and that he had discussed the death of a man at his home.

He considered there had been a lack of editorial control.

The complainant also considered that the edited version of the interview was inappropriate when repeated on Radio Ulster at 9.00 a.m. the following morning.

### The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the 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.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings about this matter.

The Adviser noted that the complainant had raised concerns that the output was offensive and considered the complaint against the relevant Editorial Guidelines on Harm and Offence.

The Adviser noted that the BBC Executive had set out the editorial purpose behind the interview with Michael Barrymore. In the Stage 1 response of 5 July 2013, the Editor of *The Nolan Show* stated:

"Our interview with Michael Barrymore sought to explore different aspects of his career, including: his background and upbringing; the pressures of a celebrity lifestyle (reflecting his fame and wealth during the 1990s); his relationship with Cheryl Barrymore and his sexual orientation; and issues around the death of Stuart Lubbock. This interview attracted a significant level of audience reaction and some press coverage. It had clear editorial justification, based on the fact that Michael Barrymore remains a well-known figure and that he has not recently talked at length (or in detail) about the events which prompted the end of his

mainstream career. I'm satisfied that the content and tone of this interview was appropriate to its time-slot and consistent with audience expectations. It dealt with difficult and sometimes uncomfortable issues and the realities of Michael Barrymore's life."

In his Stage 1b response of 8 July 2013, the Head of Corporate & Community Affairs, BBC Northern Ireland commented further:

"Michael Barrymore was a well-known celebrity during much of the 1990s. The circumstances surrounding the end of his mainstream career, and subsequent revelations about his mental health issues, drug/alcohol dependence and the events linked to the death of Stuart Lubbock have been (and remain) a matter of general interest. Our live interview with Michael Barrymore on BBCNI television (05.06.13) provided an opportunity to explore different aspects of his life and career. It touched on themes and behaviours that some people may have found uncomfortable, including his conflicted sexual orientation, drug use and his actions in the immediate aftermath of Stuart Lubbock's death."

The Adviser also noted the response of the ECU's Complaints Director at Stage 2 who stated in his letter of 23 August 2013:

"I can't see that anything which was included in the TV programme would have exceeded the expectations of the audience. I recognise that you thought it was inappropriate for the conversation to include Mr Barrymore's frank admissions - including having taken drugs, and having had a happy sex life with his wife despite being gay - were inappropriate, but I must say I think this is the sort of material a late night talk show might reasonably be expected to cover, and I don't think that the offence you took would have been widely shared. I did not, for instance, think that Mr Barrymore was graphic in his descriptions, or that he sought to glamorise his experiences with drugs or play down the consequences of the murder enquiry in which he had been involved. Nor am I able to see anything offensive in his aside to a member of the studio audience - a comment which seemed to me at worst to be a mild humorous rebuke, which apparently caused no offence to the person shown."

The Adviser noted that the Guidelines do not prohibit the inclusion of content which some audience members might find offensive or challenging, as long as there is a clear editorial purpose and it does not fall outside the likely audience expectation for the programme in which it is included. She agreed with the Complaints Director that the material would have been within the expectations of the audience of both BBC One Northern Ireland and Radio Ulster and noted that the presenter, Stephen Nolan, was a well-established interviewer on both radio and television.

In terms of the specific points raised, she noted that the Head of Corporate & Community Affairs in his stage 1b had said:

"The television interview included a brief exchange with members of the studio audience, during which Michael Barrymore, in what was intended as a humorous aside, used the words '...close your legs'."

She did not consider Trustees would be likely to conclude the comment was a breach of the Editorial Guidelines relating to Harm and Offence and did not consider it had a reasonable prospect of success if it were to proceed to appeal.



With regard to the aspect of the complaint relating to the broadcast of an edited version of the interview on Radio Ulster at 9.00 am, the Adviser considered the relevant Guideline about radio scheduling:

#### 5.4.12

Radio does not have a watershed. Our scheduling decisions should be based on the audience expectations of each radio service and informed by our knowledge of when children are particularly likely to be in our audience. We must take extra care when different generations may be listening together. This typically applies during the morning and afternoon school runs or during school holidays. Unexpected or challenging material should be clearly signposted to avoid causing unjustifiable offence.

The Adviser noted that the radio programme began when children would have been in school and noted that the date of broadcast was not a school holiday in Northern Ireland. She noted and agreed with the comments of the Complaints Director:

"As you will know radio, unlike television, does not have a watershed. However the guidelines say that programme-makers should be mindful of audience expectations and 'knowledge of when children are particularly likely to be in our audience'. I don't think it particularly likely that children would have listened to the radio programme, and in any case I think the expectations of the regular audience would certainly encompass conversations which touched on the subjects that this did. Nothing in what was aired seemed to me to go beyond what might reasonably be expected for a programme of this nature, and I don't think the possibility that there might have been a teenager listening should have precluded the programme from discussion of the issues."

The Adviser considered that Trustees would be likely to conclude that the content of the interview, including references to Michael Barrymore's homosexuality, to his drug and alcohol problems, and the death of a man at his home, would have been within the expectations of both the radio and TV audience – particularly given how well known the interviewee was and how well-established the interviewer was.

She considered that overall the tone of the interview was open and challenging. She considered the interviewer had not glamorised or trivialised the subject matter but had asked the kind of questions his audience would have expected.

While she noted the complainant felt there had been a lack of editorial control she considered the interview addressed the subjects that the audience would have been expecting, given the publicity that had surrounded Michael Barrymore's life.

The Adviser noted there was nothing in the Guidelines to prohibit discussion of individuals' sexual orientation or other related issues in morning output, and that editorial decisions about what was appropriate were matters for the BBC Executive, and would always involve a degree of subjectivity.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which the Adviser believed the Trustees would decide did not apply in this case.

Decisions relating to what subjects were appropriate to cover in programme interviews fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The Adviser considered Trustees would be likely to conclude that there was a clear editorial justification for the programme makers to have approached the interview with Michael Barrymore in the way they did. For the reasons set out above, she decided the appeal did not have a reasonable prospect of success and should not be put before Trustees.

### **Request for review by Trustees**

The complainant requested that the Trustees review the decision not to proceed with his appeal and referred to the comments made by Michael Barrymore as “offensive and sexist”. He did not consider the points he had made about the radio repeat of the programme had been adequately addressed.

### **The Committee’s decision**

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant’s letter asking the Committee to review her decision. The Committee was also provided with both versions of the programme in question.

The Committee noted that the complainant did not accept the reasoning given by the Senior Editorial Complaints Adviser not to proceed with the appeal.

The Committee noted that the radio edition of the programme which was the subject of the current complaint was broadcast during term-time when a small number of children would have been likely to be listening. This was a factor taken into account when assessing the likely offence which might be caused by a particular broadcast.

The Committee noted that radio does not have a watershed, and that scheduling decisions should be based on the audience expectations of each radio service and informed by the broadcaster’s knowledge of when children are particularly likely to be listening.

The Committee noted the comments of the BBC Head of Corporate & Community Affairs, Northern Ireland, in his Stage 1b response of 8 July 2013, that Radio Ulster “would always be sensitive to listener expectations and the ways in which the profile of the audience can change across the year – e.g. school holidays.”

The Committee was of the view that it would be likely to conclude that the content of the interview with Michael Barrymore would have been within the expectations of the audience for both the TV and the radio broadcasts. The Committee agreed that there was nothing in the Editorial Guidelines to prohibit discussion of individuals’ sexual orientation or other related issues in morning output, and that editorial decisions about what was appropriate were matters for the BBC Executive.

The Committee was of the view that it would be likely to conclude that the programme met the Generally Accepted Standards as set out in the Editorial Guidelines and would not have exceeded the expectations of its television or radio audience.

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

## **Decision of BBC Audience Services not to respond further to complaint about allegations of factual inaccuracy and bias in emails from BBC Online Middle East Editor**

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 Audience Services not to respond further to his complaint about internal BBC emails from the BBC's Middle East Editor, dated November 2012 which had been published on a third party website. He considered the emails inaccurate and biased and put pressure on staff.

BBC Audience Services responded to the complainant on 4 September 2013, stating that:

"BBC reporting on the Israel-Gaza conflict in November 2012 was balanced and impartial. We are committed to accurate reporting and the internal document which has been cited has been misinterpreted."

The complainant renewed his complaint, stating that the response did not address his points.

Audience Services responded on 13 September at Stage 1b, explaining that complaints about BBC output had to be made within thirty working days of the original transmission or publication and providing the complainant with a link to the complaints framework. In terms of the complainant's comments about the content of internal emails, it stated:

"We do not consider that, in this case, material on a third-party website based on leaked internal documents constitutes a possible breach of the BBC's editorial guidelines. Therefore, in order to use licence fee resources appropriately, we do not propose to investigate further. ... we do not consider the points you raised suggested a possible breach of standards."

The complainant appealed to the BBC Trust on 13 October. He said that he believed his complaint remained valid, provided the information upon which it was based was valid, regardless of how the information came into being.

### **The Trust Unit's decision**

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that she had carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings.

The complainant had appealed on the substance of his complaint which was that the BBC Online Middle East Editor had demonstrated a lack of factual accuracy and impartiality in BBC emails he had written in November 2012 which were later published on a third party website. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore

decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the events which the internal emails related to dated back to November 2012 and the emails were reportedly written during that time. They had been leaked to a third party website in spring 2013.

The Adviser noted the two emails had been sent to editorial teams in response to viewer complaints during the eight days of fighting in Gaza in November 2012. The contents of two emails had been leaked to a third party site which had quoted them both.

The Adviser noted that the BBC's Editorial Guidelines set out the values and standards that all of the BBC's published or broadcast output was required to meet. The editorial complaints process assessed the BBC's output against those standards. The Adviser noted that BBC Audience Services had explained that it considered the Editorial Guidelines did not apply in this situation:

"We do not consider that, in this case, material on a third-party website based on leaked internal documents constitutes a possible breach of the BBC's editorial guidelines."

The Adviser considered that Trustees would be likely to agree with Audience Services that the Editorial Guidelines did not apply to documents which were not intended for publication and which had not been published by the BBC. She noted that the complainant had not complained that any BBC output failed to meet the Guideline requirements on either accuracy or impartiality. Therefore she considered Trustees would conclude that BBC Audience Services had acted appropriately in notifying the complainant that it would not correspond further.

The Adviser considered too that Trustees would be likely to conclude that the BBC was entitled to send operational notes to its editorial teams. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence – which did not apply in this case.

The Adviser did not consider the appeal had any reasonable prospect of success and she did not propose to put it before the Trustees.

### **Request for review by Trustees**

The complainant requested that all the issues raised in his original complaint be considered by Trustees and also raised additional points.

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

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

The Committee noted that the complainant did not accept the reasoning given by the Trust's Senior Editorial Complaints Adviser not to proceed with the appeal, and acknowledged the points made by the complainant in his challenge.

The Committee noted that the BBC's Editorial Guidelines set out the values and standards that all of the BBC's published or broadcast output was required to meet. The editorial complaints process assessed the BBC's output against those standards.

The Committee noted the response of Audience Services:

"We do not consider that, in this case, material on a third-party website based on leaked internal documents constitutes a possible breach of the BBC's editorial guidelines."

The Committee agreed that the Editorial Guidelines did not apply to documents which were not intended for publication and which had not been published by the BBC.

The Committee was of the view that the BBC was entitled to send operational notes to its editorial teams.

The Committee agreed that the BBC's responses to the complainant had been appropriate given that the complaint did not raise an issue of a breach of the Editorial Guidelines, and it would be likely to conclude that it was reasonable for the BBC to have decided not to engage in any further correspondence on the same point.

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