

Editorial Standards Findings

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

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Remit of the Editorial Standards Committee

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

The Committee comprises five Trustees: Alison Hastings (Chairman), David Liddiment, Richard Ayre, Sonita Alleyne and Bill Matthews. It is advised and supported by the Trust Unit.

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

Summaries of findings

Complaint handling at Stages 1 and 2

The complainant contacted the Trust following the decision of the Editorial Complaints Unit (ECU) not to entertain his complaint at Stage 2 of the process. The complainant also raised issues in relation to a conflict of interest in the handling of the complaint at Stage 1 of the process.

The Committee concluded:

- that the Editorial Guidelines on Conflict of Interest were not relevant to the handling of a complaint.
- that there was insufficient evidence to suggest actual bias in the decision of the Head of Commissioning not to uphold the complaint at Stage 1.
- that the Complaints Procedure allows for a response at Stage 1 from somebody who has worked on the relevant content and there was no apparent bias in the Head of Commissioning handling the complaint at Stage 1 when he produced the programme that was the subject of the complaint.
- that, while there was insufficient evidence to suggest actual bias, the legal test for apparent bias had been met in that the Head of Commissioning had handled the complaint even though his wife had worked on the series.
- that the decision not to entertain the complaint at Stage 2 on the basis that the complainant was out of time, in circumstances where he had been promised that additional replies would be forthcoming, was unreasonable.
- that the approach taken by the ECU, whereby the complainant was provided with one reason but, in reality, the decision was also based on other factors, was not appropriate and lacked transparency.
- that the other reasons provided by the ECU in response to the appeal amounted to irrelevant considerations and should not have been taken into account.
- that replies at Stage 1 had been delayed and contained inadequate reasoning such that the Accountability Guidelines had been breached.
- that the complaint (in its entirety) should go back to Stage 1 for fresh consideration and BBC Wales should consider all of the points originally raised by the complainant as though the expedited procedure was not in place in relation to this particular complaint.

The complaint was upheld.

For the finding in full see pages 8 to 20.

Gaza Tweet, 15 November 2012

The complainant said that a tweet by BBC News correspondent Wyre Davies on 15 November 2012 breached the BBC's guidelines on accuracy. The complainant alleges that the tweet gave a misleading impression of the number of civilian deaths and should have been either corrected or deleted.

The Committee concluded:

- that the source of the information contained in the tweet was appropriate but it would have been best practice to have attributed the information so as to enable readers to better judge its reliability.
- that the tweet which said that "nearly all" of the reported 16 dead were civilians had gone beyond the information which had been obtained at that point and had therefore constituted a breach of the Accuracy Guidelines.
- that this breach reflected nothing other than the extreme pressure under which Mr Davies and other journalists in Gaza had been working.
- that there was no breach of the Guidelines' requirement for the BBC not to knowingly and materially mislead its audiences.
- that there was no requirement under the Guidelines for the BBC to have issued a correction in this instance, or to have deleted the tweet and entered a more accurate one as the complainant had suggested, but that the complaint raised important questions about the use of Twitter which would need to be considered further.
- that, while it was a breach of the requirement for due accuracy to report that "nearly all" of the casualties had been civilians, the Committee did not consider any of the Guidelines on impartiality had been breached.

The complaint was partially upheld with regard to Accuracy and not found to be in breach with regard to Impartiality.

For the finding in full see pages 21 to 29.

BBC News Online "Viewpoints: how experts see UK role in EU"

The complaint relates to an article on BBC News Online entitled "Viewpoints: How experts see UK role in EU". The complainant said that the article was biased in that it did not provide an adequate range of opinion. Specifically, he alleged it included only "pro-EU" voices, did not include an expert who believes the UK should withdraw from the EU, and did not reflect public opinion in Europe.

The Committee concluded:

- that it was implicit in the introductory text that the article was dealing with opinion from mainland Europe and not in the UK and it was not inaccurate for the article to state that BBC News had asked "some prominent European politicians and analysts for their views".

- that the article had clearly signposted the aspect of the issue that it was exploring, and it had acknowledged that a range of views exist in Britain on the general issue of EU membership.
- that the BBC had made a legitimate editorial choice in choosing to reflect the opinion of politicians and analysts in mainland Europe, and that the absence of an opinion specifically advocating UK withdrawal from the EU did not mean that “anti EU” voices had been excluded.
- that UK withdrawal from the EU was not a significant opinion within the narrow aspect of the subject that BBC News had chosen to explore in this article (i.e. seeking views of non-British experts and politicians on the question of how the UK would fit into the EU’s plans for closer integration).
- that it would be unreasonable to expect the BBC to reflect opinions which might not be publicly aired in an article setting out public statements on the EU and the UK, however much that might be possible in another format or context.
- that the selection criteria of the interviewees was not flawed and due impartiality had been achieved in a way that was adequate and appropriate to the output taking into account the subject and nature of the content and likely audience expectation.
- that it was a justifiable editorial judgement, within the overall premise of the article, to limit gathering of opinion to politicians and experts.

The complaint was not upheld.

For the finding in full see pages 30 to 36.

BBC News at Six, 28 November 2012

The complaint relates to a statement by the England team football manager, Roy Hodgson, in an item on the BBC News at Six that it was an Englishman who first brought football to Brazil. The complainant said that the statement was factually incorrect and should have been corrected by the BBC.

The Committee concluded:

- that there was no definitive answer to the question of who first brought football to Brazil.
- that, notwithstanding the differing evidence as to who brought football to Brazil, the Committee considered it likely that Mr Hodgson was referring to Charles Miller.
- that, in referring to an “Englishman”, Mr Hodgson was expressing a common belief, widely held in both Brazil and the UK, that Mr Miller was English.
- that Mr Hodgson’s statement about the origins of football in Brazil was simply an expression of a view that was widely held at the time he made his comment and, whilst what he said might not have been strictly accurate in terms of the most recent research, in the context of an interview about England’s prospects in the

coming World Cup, the Committee concluded that it was duly accurate.

- that, as the origin of football in Brazil was not the central focus of the interview, and Mr Hodgson was expressing a widely held belief, the Committee did not consider that the audience would in any event have been materially misled.
- that, in the light of its decision that due accuracy had been achieved, no correction was required.
- that, whatever the rights and wrongs of the description of the origin of Brazilian football, the reference in this context could not be said to be “a serious factual error”.
- that it had seen no evidence of a breach of the Impartiality Guidelines in this case.

The complaint was not upheld.

For the finding in full see pages 37 to 42.

***QI*, BBC Two, 11 January 2013**

The complainant said that a limerick recited in an episode of *QI* was inappropriate in a comedy programme. The complainant alleged that the limerick trivialised the subject of paedophilia and that it was not a subject to make jokes about because of the severe damage suffered by victims.

The Committee concluded:

- that no particular subjects were absolutely off limits for humour, but that vital factors such as the context, the intention, and the audience expectation, should be taken into account when considering whether potentially offensive material was editorially justified.
- that viewers of *QI* would understand the purpose of the limerick as an illustration of their outrageousness, and not as a way of condoning the sexual abuse of children or making light of the suffering of victims of paedophilia.
- that the limerick would not have exceeded generally accepted standards given the audience expectations of this programme and its host.
- that the timing of this episode before the *Newsnight* report on the Jimmy Savile case was unfortunate and regrettable.
- that the proximity of the two items was capable of causing offence and the decision to proceed was finely balanced, but most viewers would not find the limerick’s content strong enough to find a resonance in the *Newsnight* report.
- that this was at the margins of acceptability given the heightened sensitivities surrounding the Jimmy Savile case, but, on balance, the programme was not in breach of the BBC Editorial Guidelines.

The complaint was not upheld.

For the finding in full see pages 43 to 47.

Charlie Sloth, BBC Radio 1Xtra, 19 February 2013

The complainant said that remarks made by Charlie Sloth were were offensive and perpetuated a negative stereotype about older people, and that this was made worse because they were said to a young person working in the care sector.

The Committee concluded:

- that it did not accept a link between these remarks and the serious issue of the abuse of elderly people.
- that, as with all members of society, young people have inter-generational contact and would be unlikely to base their views or be influenced in their attitude to the elderly by such offhand comments.
- that the presenter's comments had clearly been exaggerated for comic effect and that such comments fell within the audience's expectations.
- that, while the remarks may have been disrespectful, they were not meant to be cruel or offensive and did not exceed generally accepted standards, taking account of the nature of the content and the context in which it occurred.

The complaint was not upheld.

For the finding in full see pages 48 to 54.

Appeal Findings

Complaint handling at Stages 1 and 2

1. Background

The original complaint

The complainant's original complaint concerned a programme on the topic of Devolution. The episode complained about was part of a series known as the Red Letter Day series. The Red Letter Day series is an archive programme that highlights one day that changed events in the history of Wales or a certain part of Wales.

The episode on Devolution concentrated on the day that Wales voted for Devolution in 1997. It then traced the history of the Devolution process from the beginning of the 20th century. The particular episode complained about featured Mr Rhodri Morgan (the longest serving First Minister) who described to the audience the events that led to the vote for Devolution in 1997. The Red Letter Day series was produced by a production company named Absolutely.

The scope of this appeal

The complainant is currently subject to the expedited procedure at Stage 3 (the BBC Trust). In accordance with that procedure, if a complaint meets any of the conditions in paragraph 2 of Annex B of the Complaints Framework, the complaint does not require acknowledgement and it may be rejected without notifying the complainant or providing any reasons. However, if a complaint does not meet any of the conditions in paragraph 2 of Annex B, and in fact raises an issue of breach of any relevant Guidelines or policies, the procedure makes it clear that the complaint should be investigated in accordance with the usual complaints procedure. A copy of the Complaints Framework can be found here: http://www.bbc.co.uk/bbctrust/governance/complaints_framework/

The majority of the points addressed in the complainant's appeal to the Trust fall within the scope of the expedited procedure and hence are not the subject of this appeal. Those points made about the content of the episode itself have not yet been considered at Stage 2 and therefore the Trust concluded it would not consider them at this point.

However, the following points made by the complainant in his appeal to the Trust fall outside paragraph 2 of Annex B and raise issues relating to a breach of Guidelines or policies and, accordingly, are the subject of this appeal:

- whether the Head of Commissioning at BBC Wales, was conflicted (and accordingly should not have dealt with the complaint at Stage 1) by virtue of the fact that his wife worked as a producer on the Red Letter Day series and given his own role in producing the episode complained about;
- whether the decision taken by the Complaints Director of the ECU, not to consider the complaint at stage 2 was reasonable; and
- whether the delays experienced by the complainant at Stage 1 were excessive and whether the reasons given for the decision were adequate.

This finding addresses each of these points in turn.

2. The complaint

Stage 1

27 May 2011

The complainant wrote to BBC Wales on 27 May 2011 to complain about the Red Letter Day episode on Devolution. The allegations made by the complainant regarding the content of the programme are outside the scope of this appeal, which is confined to the issues outlined above. However, by way of an overview, these complaints related to (1) the accuracy of various comments made by Rhodri Morgan regarding the reasons for Devolution (which the complainant considered reflected badly on Margaret Thatcher) and (2) impartiality.

16 June 2011

On 16 June 2011, the Head of Commissioning at BBC Wales acknowledged receipt of the complainant's letter and provided a brief description of the Red Letter Day series, as well as the episode on Devolution that was broadcast on 17 May 2011. In relation to the specific points raised by the complainant, the Head of Commissioning stated as follows: "I am sorry you disagreed with the programme content. I believe BBC Wales is impartial in its dealing with the Welsh assembly and all parts of Welsh public life and was so on this occasion."

8 August 2011

The complainant sent the follow up letter to his 27 May 2011 letter on 8 August 2011. He expanded, in detail, on his concerns regarding accuracy and impartiality.

11 August 2011

The Head of Commissioning at BBC Wales responded on 11 August 2011 and explained that he would reply once he had consulted with the programme makers, who were, at that time, on holiday.

5 October 2011

The Head of Commissioning at BBC Wales provided a more substantive response on 5 October 2011. In this letter, he explained that he did not think that there was any inaccuracy or bias in the programme. He set out brief reasons for reaching that conclusion. In essence, these were that "the views that Mr Morgan expressed in the programme are based on his reflections on historical events as a now retired politician. Given the format of the programme, we believe that the audience would have understood that the views expressed were Mr Morgan's own. Your letter outlines areas where you disagree with Mr Morgan's reflections on historical events. Whilst I appreciate your views on this subjects differ from Mr Morgan, I do not believe that they are matters of current political contention that required balance within the programme." He also disagreed with the complainant that there was a factual inaccuracy in the statement that "apart from Nicholas Edwards, all of Mrs Thatcher's Secretaries of State for Wales were English".

31 October 2011

The complainant responded on 31 October 2011 reiterating his concerns about the content of the programme in relation to accuracy and impartiality.

In the letter dated 31 October 2011, the complainant also asked a number of questions, including (but not limited to):

- whether the Head of Commissioning could confirm whether he spoke with the programme makers or, if he did not do this, explain why it took 2 months for him to send such a simple letter of rejection;
- whether Absolutely had any connection with BBC Wales;
- whether the Head of Commissioning could confirm his contribution to the programme, if any, given his role as Head of Commissioning; and
- whether the Head of Commissioning had any responsibility for authorising the content of the programme as suitable.

8 November 2011

The Head of Commissioning responded on 8 November 2011 and said that he would respond to the complainant's very detailed letter in due course.

12 January 2012

The Head of Commissioning wrote to the complainant on 12 January 2012. He reiterated points made in previous correspondence about the content of the programme. He also responded to some of the questions raised by the complainant in his letter dated 31 October 2011. The Head of Commissioning:

- stated that Absolutely, the independent production company that made the programme, was one of a number of companies that were commissioned through a "rigorous commissioning process";
- confirmed that neither Absolutely nor the presenter had any connection with BBC Wales;
- asserted that "As Head of Commissioning I have mentioned in my BBC declaration of interest that my wife ... is a freelance producer. I did not take part in the commissioning of Red Letter Day as she was employed as a producer on the series. However she had no role in making the Devolution programme" ; and
- informed the complainant that if he remained dissatisfied with the response, he could appeal to the ECU.

15 February 2012

The complainant responded on 15 February 2012 and expanded, in considerable detail, on his specific grievances with the content of the programme (i.e. the reflections of Mr Morgan). The complainant then:

- repeated his question regarding whether the Head of Commissioning met with the producers and noted that this was not covered in the reply dated 12 January 2012;
- noted the statement made by the Head of Commissioning that his wife did not take part in the particular episode on Devolution and enquired why this was the case;
- enquired whether the Head of Commissioning's wife got paid for the episode;
- asked why she was listed in the credits of the episode if she did not take part in its production;

- enquired who was responsible for authorising this programme as being suitable for television and noted that the Head of Commissioning had not yet said who this was;
- asked what form the declaration of interest made by the Head of Commissioning regarding his wife being a producer on the programme actually took;
- asked when the declaration of interest was declared and whether it was publicly available;
- asked whether the Head of Commissioning's wife would also have had to declare an interest in BBC Wales, given that she was "engaged by Absolutely" and "married to the Head of Commissioning at BBC Wales";
- noted the Head of Commissioning's assertion that he did not commission the series and requested the name of the individual who did;
- asked why the Head of Commissioning dealt with his complaint when he had a "strong personal interest in ensuring that any complaint against this company, as well as BBC Wales failed";
- enquired why the Head of Commissioning did not recuse himself "from dealing with the complaint from the outset";
- stated that although his initial reaction had been to write to the Director of BBC Wales to request that another person be appointed to deal with the complaint, the complainant felt that he had no option but to allow the matter to remain with the Head of Commissioning, on the basis that "there is probably no one in a senior position at BBC Wales who is sufficiently independent and unconnected with the left of Welsh politics who would have a different view"; and
- requested that the Head of Commissioning answer the questions that were now "so familiar to him, especially those connected to [his] wife".

25 February 2012

The Head of Commissioning at BBC Wales responded on 25 February 2012 and stated that he would give some thoughts to the points raised and would respond in "due course".

27 February 2012

The complainant then wrote to the Director of BBC Wales on 27 February 2012, referring to his letter of 15 February 2012 to the Head of Commissioning. He alleged that the Head of Commissioning had not provided him with any evidence to indicate that the programme was factually correct.

He stated that "because [the Head of Commissioning] has not addressed any of the accusations I have made about this programme and because he has given me no reason to believe that he will do so now, I require and expect you as head of BBC Wales to instruct [the Head of Commissioning] to respond directly and positively to the alarming amount of misinformation contained in this episode and inform me accordingly".

He concluded by stating that he would be grateful if the Head of Commissioning could indicate in his reply that the Director of BBC Wales was fully aware of and agreed with the contents of any response.

1 March 2012

On 1 March 2012, the Business Manager to the Director of BBC Wales acknowledged receipt on behalf of the Director of BBC Wales of "three letters, dated 27 February, which were hand delivered to BBC Wales" and stated that "they are currently receiving attention and responses will be sent to you as soon as possible".

15 August 2012

The Head of Commissioning did not reply to the letter from the complainant, dated 15 February 2012, until 15 August 2012. The response simply provided that: "Further to your letter of February 15 2012 regarding the Red Letter Day programme. After consideration, I have nothing to add to my replies to you on October 5 2011 and January 12 2012. I will not enter into any further correspondence relating to this matter."

No further letters were exchanged at Stage 1 and it was after this letter that the complainant appealed to Stage 2.

Stage 2

29 August 2012

On 29 August 2012, the complainant emailed the Complaints Director of the Editorial Complaints Unit (ECU) and asked him to consider the attached letter of the same date. In the cover email, the complainant stated that "this complaint is about the accuracy of the statements made in the programme which [he] believe[d] gave a false image of Welsh devolution on the powers it has". He stated that he would be grateful if the ECU would look into the matter and let him have a reply as soon as possible.

In the cover letter dated 29 August 2012, the complainant specifically referred to the following letters:

- his letter dated 8 August 2011;
- the letter from the Head of Commissioning dated 5 October 2011;
- his letter dated 31 October 2011; and
- his letter dated 15 February 2012.

The complainant explained that the above letters from him, together with the letter dated 29 August 2012, set out the extent of his complaint. In terms of the issues that are the subject of this appeal, the complainant said the following:

- "another concern about [the Head of Commissioning] was his admission that his wife worked as a producer for the maker of this series but assured me as Head of Commissioning he had no input into acquiring that series or that his wife was involved in the making of the episode"; and
- "I regard [the Head of Commissioning's] acceptance to deal with this complaint as improper in view of the strong family ties he has with the makers".

The complainant also referred to his letter dated 27 February 2012 to the Director of BBC Wales, in which the complainant said he required the Director to instruct the Head of Commissioning to respond to the complainant's letter dated 15 February. The complainant referred to "two follow up" letters that he wrote to the Director of BBC Wales but that these were "to no effect". The complainant explained that he had visited BBC Wales on 9 August 2012 in order to find out why he had not received any replies. He said the Head of Commissioning had replied "six months after [he] wrote ... replying that he had nothing to add".

6 September 2012

The ECU responded on 6 September 2012 and informed the complainant that it did not intend to entertain his complaint for the reasons set out in the attached letter.

The reasons given in the letter were as follows:

- the Head of Commissioning mentioned, in his letter dated 12 January 2012, that the complainant could write to the ECU if he was dissatisfied with the response from stage 1;
- Although there was some subsequent correspondence with the Head of Commissioning, the letter dated 12 January 2012 made it clear that the ECU was the next step for the complainant; and
- complainants should bring complaints (to Stage 2) within a “reasonable timeframe” after correspondence at Stage 1.

9 September 2012

The complainant responded on 9 September 2012 and explained that he was not happy with the explanation provided by the ECU for the refusal to consider his complaint “by ignoring the other correspondence [he] had with [the Head of Commissioning]”.

2 October 2012

In a letter dated 2 October 2012 to the Head of Editorial Complaints of the ECU, the complainant stated that:

- at stage 1, the Head of Commissioning had replied on 25 February 2012 saying that he would give the matter some thought and respond in due course;
- the Director of BBC Cymru Wales replied saying that he would respond as soon as possible;
- several months later, neither the Head of Commissioning or the Complaints Director had replied;
- he had sent follow up letters but again, did not receive a reply;

he had visited the BBC Wales studios in person to ask why a reply had not been sent and it was only after this that he received the reply from the Head of Commissioning in which he stated that he had nothing further to add to his previous letters; and

- The ECU were wrong to disregard the additional correspondence (i.e. the letters in which the complainant was led to believe that a reply would be forthcoming) when deciding whether or not to consider his complaint.

With regards to the conflict of interest point, he stated that:

- “[the Head of Commissioning’s] involvement with his complaint was totally improper from the outset and presented a definitive irrefutable conflict of interest”; and
- “[the Head of Commissioning] should have disqualified himself from dealing with this complaint ...”

The complainant chased the Head of Editorial Complaints of the ECU for an acknowledgement on 10 October, 19 October and 18 November 2012. There was no reply from the Head of Editorial Complaints.

Appeal to the Trust

The complainant wrote to the BBC Trust on 11 March 2013. The complainant summarised the correspondence that he had exchanged with the BBC throughout Stages 1 and 2.

With regards to the conflict of interest point, he alleged that:

- the Head of Commissioning acted quite improperly by responding to his complaint when he knew his wife worked at Absolutely on the series. This was a conflict of interest which clearly should have disqualified him from responding in the first place;
- "because of the very serious personal charges made against [the Head of Commissioning's] integrity, I firmly believe that his position has been so seriously compromised that Stage 1 is incomplete and void."

In relation to the decision by the ECU not to entertain his complaint, he:

- referred to the Head of Commissioning's assurance that he would respond in due course, and to the assurance that the Complaints Director of the ECU would respond "as soon as possible";
- alleged that "these replies fundamentally altered the state of enquiry which meant that [the complainant] could await a reply from the Head of Commissioning before contacting the ECU"; and
- stated that the Complaints Director of the ECU should have taken into account "all the circumstances surrounding the complaints and should have treated [him] on an equal footing to the BBC".

3. Applicable legal tests and Editorial Guidelines

Editorial Guidelines – Conflicts of interest

Section 15 of the BBC Editorial Guidelines deals with conflicts of interest and can be found here: <http://www.bbc.co.uk/editorialguidelines/page/guidelines-conflict-of-interest-introduction>.

The legal test for bias

Actual bias occurs where a decision maker takes a decision that was influenced by partiality or prejudice. Academic commentary in this area suggests that it is "difficult to prove".

The test for apparent bias

The test to be applied for determining the existence of apparent bias is whether "the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [decision maker] was biased".

The test has been described as follows: "the fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to

that matters, not what is in the mind of the particular [decision maker] who is under scrutiny.”

The threshold for expecting a professional decision maker to recuse themselves on the basis of there being an appearance of bias is relatively high.

Accountability

Section 19 of the Editorial Guidelines deals with Accountability. Section 19.4 specifically addresses “Feedback and Complaints”. The Accountability Guidelines can be found here: <http://www.bbc.co.uk/editorialguidelines/page/guidelines-accountability-principles/>

119.4 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. The Committee also took into account the relevant legal tests and the requirements of the Complaints Framework. In reaching its decision, the Committee took full account of all the available evidence including (but not limited to) the report prepared in advance of the appeal and the subsequent submissions from BBC Wales and the ECU on the background and considerations note (BCN) prepared in advance of the appeal. The complainant did not provide any substantive comments on the BCN. The Trustees were provided with all of the correspondence between the complainant and the BBC Executive in relation to this appeal.

Preliminary point

The Committee noted that the complainant had contacted the Trust on 3 July 2013 (the day before the meeting of the Editorial Standards Committee) and indicated that he wished to comment on the comments made by BBC Wales and the ECU. The complainant indicated that he would not be able to comment on those comments for “at least two weeks”. He alleged that he had not been told of the date in July when the ESC meeting was due to take place and that he had not been given the opportunity to respond to the comments made by BBC Wales and the ECU on the BCN. He requested that if the hearing date was imminent that it be deferred until he had provided the Trust with his comments.

The Trustees first considered whether the complainant had been informed of the date of the ESC meeting. It is clear that the complainant had been given this information. This is evidenced by emails dated 10 June and 26 June 2013. The Trustees also noted, contrary to what the complainant alleged, that he was in fact given the opportunity to comment on the comments from BBC Wales and the ECU, as evidenced by the email dated 26 June 2013. The Trustees also considered the time and disruption that would be involved were this appeal to be delayed. In light of the above, the Trustees agreed to proceed with the appeal.

Conflict of interest

The Committee noted that there are Editorial Guidelines on Conflicts of Interest. The Trustees noted that the wording of the Guidelines focuses on individuals being influenced by external influences when making editorial decisions.

The conflict of interest allegation made by the complainant in this appeal relates to whether the Head of Commissioning should have recused himself from dealing with the complaint as a result of being married to a producer on the Red Letter Day series. It did not include any other accusations of a conflict. However, it subsequently transpired (during the course of comments received from BBC Wales on the BCN) that the Head of Commissioning’s role was not limited to handling this complaint; he was also the

Executive Producer for the Devolution episode (the credits erroneously listed a different name for this role).

The Trustees agreed that they needed to consider the significance of both (i) the fact that the Head of Commissioning's wife worked as a producer on the programme (but not the Devolution episode) and (ii) the fact that the Head of Commissioning was the Executive Producer for the Devolution episode.

The Trustees first considered the test that they needed to apply in relation to the conflict of interest issue. They agreed that the decision as to whether or not to recuse oneself or deal with a complaint is not an editorial decision. Accordingly, the Trustees agreed that the Conflict of Interest Guidelines were not relevant in this particular appeal.

The Trustees agreed that the appropriate tests that needed to be applied were the legal tests for actual bias and apparent bias.

The first reference to the Head of Commissioning's wife being employed as a producer on the series was in the letter dated 12 January 2012:

"As Head of Commissioning I have mentioned in my BBC declaration of interest that my wife ... is a freelance producer. I did not take part in the commissioning of Red Letter Day as she was employed as a producer on the series. However she had no role in making the Devolution programme."

The Trustees considered whether there was any evidence to suggest that the Head of Commissioning's decision not to uphold the complaint at Stage 1 was influenced by the fact that his wife worked as a producer on the Red Letter Day series or that he produced the Devolution episode.

The Trustees noted that the threshold for actual bias is very high and that academic commentary in this area makes it clear that this is difficult to prove. They agreed that there was insufficient evidence to suggest that this test was met.

The Trustees then moved on to consider the test for apparent bias. They asked themselves how the fair-minded and objective observer would view the fact that the Head of Commissioning was dealing with this complaint, bearing in mind that he produced the Devolution episode and that his wife worked on the series as a producer. They noted that the fair-minded and informed observer is to be regarded as having the relevant facts.

The Trustees considered first the significance of the fact that the Head of Commissioning worked as a producer on the Devolution episode. They accepted that some members of the public may feel uneasy about him dealing with a complaint about a programme that he worked on. However, they noted that one of the facts that the fair-minded and informed observer would have regard to is the wording of the Complaints Framework, Procedure No 1 (Editorial Complaints and Appeal Procedures) which makes it clear that at Stage 1, a response can come from or on behalf of a BBC manager or a member of the editorial team. Accordingly, the Procedure makes it clear that someone who worked on the programme may end up dealing with a complaint about that programme. The Trustees also noted that there is a right of appeal from Stage 1 to the ECU (Stage 2), where the complaint is looked at by someone who has not had any involvement in making the programme. The Trustees concluded that, on balance, the fair-minded and informed observer would conclude that the threshold for apparent bias, which is relatively high, was not met.

The Trustees then considered how the fair-minded and informed observer would view the fact that the Head of Commissioning dealt with the complaint even though his wife worked on the Red Letter Day series. The Trustees were aware that the Head of

Commissioning saw fit to make a declaration of interest regarding his wife's role in the series and that, following this, steps were taken to ensure that he did not play any part in the decision to commission the series but that he did not see fit to recuse himself from dealing with a complaint about an episode in that same series. They also noted that the information concerning his wife's role only came to light for the first time in January 2012.

The Trustees concluded that, in the circumstances, the fair-minded and informed observer would consider that there was a real risk of bias and that, accordingly, the legal test for apparent bias (though not actual bias) had been met.

Was the decision of the ECU reasonable?

The Trustees moved on to consider whether the decision of the ECU to decline to entertain the complaint was reasonable. The Trustees noted that Clause 4.3 of Procedure No. 1 provides that a complainant must contact the ECU within 20 working days of the date on which the complainant received the response from Stage 1 and that, if the complainant writes after this time, the complainant should explain why the complaint is late. They noted that Clause 4.3 also provides that the ECU "may still decide to consider your complaint, if it decides there was a good reason for the delay".

The Trustees considered whether there had been a "good reason" for the delay. They looked carefully at the correspondence between the complainant and BBC Wales. They noted that the complainant was informed of his right to appeal to the ECU in the letter dated 12 January 2012 and that he wrote to BBC Wales after that (on 15 February 2012) with a series of questions.

They noted that the Head of Commissioning responded on 25 February 2012 to the complainant's letter dated 15 February and that he stated that he would give some thoughts to the points raised and would respond in "due course". They also noted that the complainant was given a second promise of a reply, this time from the Business Manager to the Director of BBC Wales who acknowledged receipt on behalf of the Director of "three letters, dated 27 February, which were hand delivered to BBC Wales" and stated that "they are currently receiving attention and responses will be sent ... as soon as possible". They noted that the Head of Commissioning did not reply to the letter from the complainant, dated 15 February 2012, until 15 August 2012, some 6 months later. They noted that the Director of BBC Wales does not appear to have responded at all to the letter dated 27 February 2012, despite assurances from his business manager that a reply would be forthcoming in due course. They noted the allegation made by the complainant that these replies at Stage 1 "altered the state of enquiry which meant that [he] could await a reply from [the Head of Commissioning] before contacting the ECU" and that the Complaints Director of the ECU should have taken into account "all the circumstances surrounding the complaints and should have treated [him] on an equal footing to the BBC".

The Trustees considered the letter from the ECU dated 6 September 2012. They noted the following extract:

"I note that ... the Head of Commissioning for BBC Cymru Wales, wrote to you on 12 January this year and explained that you should write to the ECU if you were dissatisfied with his response. As you know, the ECU ask that correspondents bring their complaints to us within a reasonable timeframe after correspondence at stage 1.

I am aware that you had some subsequent correspondence with [the Head of Commissioning] and with BBC Wales on this and other matters. However, it seems to me that [the Head of Commissioning's] letter of 12 January made clear that the

ECU was the next step for the complaint and that you chose not to follow this course at the time despite this letter and despite your own knowledge of the BBC Complaints processes.

We therefore do not propose to entertain your complaint about this programme.”

The Trustees agreed that, on the face of this letter, it seemed that, for the purpose of deciding whether the complaint was brought within a “reasonable timeframe”, the ECU took the starting point as being the letter dated 12 January 2012 in which the complainant was informed of his right to appeal to the ECU, rather than the letter dated 15 August 2012 in which the Head of Commissioning stated that he had nothing further to add. The Trustees considered that this approach was flawed and that the decision not to entertain the complaint on the basis that the complainant was out of time, in circumstances where he had been promised that additional replies would be forthcoming, was unreasonable.

The Trustees noted that BBC Wales, in the course of commenting on the BCN, indicated that there were reasons (other than the complainant being out of time) as to why the decision was taken not to entertain the complaint. The Trustees noted the following comments in particular:

- the decision was not taken upon the bare fact of the time which had elapsed between the date [the complainant] being advised that he could escalate his complaint to the ECU (12 January 2012) and the date of his actually doing so (29 August 2012);
- as [the Complaints Director’s] letter of 6 September indicated, it was taken in the light of a review of the entire correspondence in connection with the complaint up to that date;
- we took the view that [the Head of Commissioning] had in fact addressed the issues of editorial standards raised by the complaint (though plainly not to [the complainant’s] satisfaction), and that, even though the [Head of Commissioning’s] letter of 25 February would have led [the complainant] to expect a further response from BBC Wales, there had been six clear weeks before that date during which there was no good reason preventing him from taking his complaint to the ECU if he had wished to do so;
- the broader context of our decision not to entertain the complaint which [the complainant] finally put to us on 29 August 2012 consisted of our experience of the seven complaints from [the complainant] previously investigated by the ECU ... in each case, rather than taking the opportunity to escalate his complaint when invited to do so, he replied with lists of questions which he insisted must be answered before he could progress to the next stage. For example, in the case of Dragon’s Eye (BBC Wales, 28 January 2010)....”
- in making the decision not [to] entertain [the complaint] about Red Letter Day, we also considered whether the issue of editorial standards it raised was potentially so serious as to warrant setting aside the usual requirement of timeliness. On the basis of the correspondence to date and the outcome of previous investigations into similar issues, we concluded that the possibility of there having been a serious breach of editorial standards was limited, and not such as to warrant the time and resources which would have been involved in investigating the complaint and dealing with the further correspondence likely to arise from it.

- finally, I would like to draw attention to some features of the correspondence in the current case which suggest that it was not being conducted on an entirely reasonable basis by [the complainant].

The Trustees noted that the letter dated 6 September 2012 to the complainant does not contain the reasoning mentioned above (and would seem to suggest that the decision was taken on the basis that the complainant was out of time). The Trustees considered that the approach taken by the ECU, whereby the complainant was provided with one reason but, in reality, the decision was also based on other factors, was not appropriate and lacked transparency. Furthermore, the Trustees concluded that the factors mentioned above were, for the most part, irrelevant considerations that should not have been taken into account by the ECU when reaching their decision. In particular, it is inappropriate to take into account the outcome of previous complaints purely when making a decision regarding whether to consider a later appeal. Each complaint must be looked at on its own merits.

The Trustees noted the comment by the ECU that the appeal was “not being conducted on an entirely reasonable basis” by the complainant. This is a reference to correspondence between the complainant and the Complaints Director and the Head of Editorial Complaints at the ECU. The complainant falsely accused the Complaints Director of failing to provide him with details of how to make a handling complaint (this information was provided). Several exchanges followed and the complainant explained that he subsequently realised that he had been given the information but that he “had wondered what would be the effect if [he] claimed [the Complaints Director] had not stated this and wrote an offensive letter to him” and that he took the decision not to apologise for his “little subterfuge”. The Trustees noted that this correspondence took place after the ECU had taken the decision not to entertain the complaint. Accordingly, it is clear that this did not play any part in the decision taken by the ECU.

The Trustees agreed that the ECU’s decision not to entertain the complaint on the basis that the complainant was out of time was unreasonable in light of the fact that the complainant was led (by BBC Wales) to believe that he would receive further substantive replies to his 15 February 2012 letter. They further agreed that the other reasons provided by the ECU amounted to irrelevant considerations and should not have been taken into account. The Trustees would expect the ECU to take account of this finding in making future decisions.

Given that the complaint should not have been handled by the Head of Commissioning back in May 2011 (because of the appearance of bias), the Trustees agreed that the complaint (in its entirety) should go back to Stage 1 for fresh consideration. The Trustees are aware that the complainant is currently subject to the expedited procedure at Stage 1 and that he was informed of this on 29 October 2012. Given that the complainant contacted BBC Wales about the Devolution episode before the expedited procedure was applied (and given that it should have been dealt with properly the first time round), the Trustees agreed that BBC Wales should consider all of the points originally raised by the complainant (i.e. they should proceed as though the expedited procedure is not in place in relation to this particular complaint).

The delays and adequacy of responses from BBC Wales

The Trustees noted the allegation made by the complainant that the delays experienced at Stage 1 (BBC Wales) were “excessive” and that the complainant raised concerns regarding the adequacy of the responses from the Head of Commissioning.

The Trustees noted that the Accountability Guidelines provide that “complaints should be responded to in a timely manner”. The Trustees agreed that the delays at Stage 1 had

been excessive. In particular, they noted a period of 6 months elapsed between the Head of Commissioning's letter dated 25 February 2012 (in which he stated that he would respond in due course to the 15 February letter) and his response (dated 15 August 2012).

The Accountability Guidelines also provide that "when considering complaints on substantive matters the BBC must provide adequate reasoning for its decision". The Trustees noted the brevity of the responses from the Head of Commissioning. For example, in the letter dated 5 October 2011, the Head of Commissioning simply noted that the views of Mr Morgan were based on his reflections, suggested that the audience would have understood that and stated that he did not believe that there were matters of current political contention that required balance in the programme. In the view of the Trustees, he did not adequately explain why he considered that there had not been a breach of the Accuracy and Impartiality Guidelines. Likewise in the letter dated 12 January 2012, where the Head of Commissioning provided relatively scant reasoning in response to the complainant's very detailed letter of 31 October 2011. For example, the Trustees noted that the Head of Commissioning stated simply (without expanding on the reasons as to why) that he did not believe that there was "a matter of political contention that require[d] balance in the programme" and that he did "not believe the programme breached the BBC guidelines".

In light of the above, the Trustees concluded that there had been a breach of the Accountability Guidelines.

Finding: Upheld

Gaza Tweet, 15 November 2012

1. Background

On 14 November 2012 Israel launched an air strike on Gaza that killed Ahmed Jabari, the commander of Hamas's military wing. Israel then announced the start of Operation Pillar of Defence⁴ which involved further air strikes on Gaza. The Government of Israel said 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 and that they would respond, saying "If Gaza is not safe, your towns will not be safe also". Palestinian rocket-fire into Israel intensified during the operation.

The operation lasted a week; a ceasefire was announced on 21 November 2012 after negotiations involving Egypt and the USA.

BBC News correspondent Wyre Davies reported from Gaza during the operation. On 15 November 2012 at 7.25am Mr Davies sent the following tweet from his Twitter account:

In this "limited operation" at least 13 Palestinians and 3 Israelis have been killed – nearly all civilians. #Gaza.

This message was re-tweeted by @BBCWorld at 7.54am.

2. The complaint

Stages 1 and 2

The complainant said that Mr Davies' tweet gave a misleading impression of the number of civilian deaths and he complained that the correspondent did not correct the tweet later.

BBC World News replied at Stage 1, saying that the tweet was sent by their correspondent in Israel based on information he had at the time in a fast-moving situation.

The complainant escalated his complaint to the Editorial Complaints Unit (ECU), citing an Associated Press report of 15 November 2012 which said, "A total of 13 Palestinians, including 4 civilians, have been killed and more than 100 people wounded, according to Palestinian medical officials".

The ECU did not uphold the complaint, concluding that "whilst a small majority of Palestinian fatalities may indeed have been militants, the overall total when the Israeli civilian deaths are added is that about ten out of eighteen fatal casualties were civilian".

Appeal to the BBC Trust

The complainant appealed to the BBC Trust, raising the following points in relation to the accuracy of the tweet:

⁴ <http://www.bbc.co.uk/news/world-middle-east-20388298>

Point (A) That it was reasonable for readers to assume from the tweet that “a substantial majority of both Israelis and of Palestinians killed were civilians. In fact it was neither true that nearly all of those killed were civilians or that even a simple majority of Palestinians killed were civilians”.

Point (B) As “most readers” would have understood from the tweet that “nearly all those killed were Palestinian and nearly all those killed were civilian, they would surely have come to the obvious conclusion that a substantial majority of Palestinians killed were civilians. This was clearly not the case... All of the Israelis killed were civilians, but most of the Palestinians killed were not”.

Point (C) That Wyre Davies’ tweet remains as originally posted, “when he could easily have deleted the tweet and entered a more accurate one”.

Point (D) The complainant did not specifically raise the matter of impartiality in his appeal to the Trust; however, the Trust Unit considered that, if Trustees were to conclude that the tweet was inaccurate, they would likely wish to consider whether this raised the issue of impartiality.

3. Applicable Editorial Guidelines

The full Guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The sections on Accuracy (Section 3) and Impartiality (Section 4) are 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 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 and BBC News.

Points A & B

The Committee considered the complainant’s allegation that it was reasonable for readers to assume from the tweet that “a substantial majority of both Israelis and of Palestinians killed were civilians. In fact it was neither true that nearly all of those killed were civilians or that even a simple majority of Palestinians killed were civilians”.

The Committee also considered the complainant’s related point that as “most readers” would have understood from the tweet that “nearly all those killed were Palestinian and nearly all those killed were civilian, they would surely have come to the obvious conclusion that a substantial majority of Palestinians killed were civilians. This was clearly not the case... All of the Israelis killed were civilians, but most of the Palestinians killed were not”.

The Committee noted that the section of the Editorial Guidelines on Accuracy were relevant to these points of the complaint. It noted that the requirement for “due” accuracy in all BBC output means that the accuracy must be adequate and appropriate to the output taking into account the subject and nature of the content, the likely audience expectation, and any signposting that may influence that expectation. The Committee noted that the tweet had originated from Mr Davies’ personal account and had been re-tweeted by BBC World. The Committee noted that Mr Davies was tweeting about the

situation while working as a BBC correspondent in Gaza and it concluded that this tweet was considered to be "BBC output" for the purposes of the Guidelines.

The Committee considered the particular context and circumstances that gave rise to the tweet in question. It noted that Wyre Davies tweeted 24 times during 14 November 2012, with the following tweets being most relevant:

2.03pm

Unconfirmed reports that a senior Palestinian militant (possibly from Hamas) may have been targeted in Israeli air strike on Gaza.

2.11pm

Again, unconfirmed, but it's reported that senior Hamas military figure, Ahmed Jabari, was the target of Israeli airstrike.

2.13pm

Israel confirms targeting of senior Hamas military figure Ahmed Jabari in Gaza air strike. His condition is not known.

2.17pm

IF Ahmed Jabari has been assassinated by Israel – it would place the delicate cease-fire under severe strain.

2.19pm

Ahmed Jabari is a senior Hamas figure who oversaw the detention of Gilad Shalit. Also held responsible by Israel for directing rocket attacks.

2.20pm

Hamas confirm that Jabari is dead.

2.46pm

Why now? Because, says Israel, it could not tolerate the firing of 100s of rockets from Gaza. Escalation of violence almost inevitable.

2.53pm

Israel says this assassination is part of a "limited operation" against Hamas. That's not how many in Gaza would describe such an op.

3.29pm

Perhaps not surprisingly, civilian casualties (possible deaths) also now being reported from Gaza as a result of air attacks.

3.49pm

Palestinian sources say at least 3 killed and 10 injured in the air strikes on Gaza (including Jabari)

On Thursday 15 November 2012 BBC World News sent 126 tweets, 59 of them relating to events in Gaza. Many of these messages were re-tweets of posts from BBC correspondents such as Jon Donnison, Wyre Davies and Barbara Plett. The Committee noted that at 5.12am @BBCWorld tweeted a link to a BBC News online story⁵ last updated at 6.54am that day which states (in its final version):

⁵ <http://www.bbc.co.uk/news/world-middle-east-20334575#TWEET363663>

"Jabari and another Hamas official who died alongside him were among at least 10 people killed in Gaza on Wednesday by the Israeli strikes and that number would probably rise, the Palestinian envoy to the United Nations, Riyad Mansour, told reporters in New York."

The online article also states that

"A number of injured civilians, including children, were seen being taken to hospital in Gaza City."

The Committee noted the subsequent tweets by @BBCWorld:

5.48am

@BBCWorld Three Palestinian militants killed in early morning Israeli air strike in #Gaza

6.09am

@BBC World RT @wyredavies On Israel's border with Gaza this morning. Tense with frequent sounds of rockets landing. Numerous o'night air strikes in Gaza too.

6.43am

@BBCWorld RT @wyredavies Israel news reports that rocket hits a home in Kiryat Melachi. 4 people injured, one very serious who is a baby.

6.51am

@BBCWorld RT @BBCBreaking: Palestinian rockets fired into Israel from #Gaza, with Israeli air strikes also shaking buildings - via @JonDonnison

6.59am

@BBCWorld RT @wyredavies Unconfirmed reports that at least one of those injured in the rocket attack on the Israeli town of Kiryat Melachi has now died.

7.10am

@BBCWorld RT @BBCBreaking: Three people killed as rocket fired from #Gaza hits residential building in southern #Israel - army radio. Details soon...

7.16am

@wyredavies Israeli Police confirm to BBC that 3 people killed after missile hit on apartment block in Kiryat Malachi in southern Israel.

7.25am

@wyredavies In this "limited operation" at least 13 Palestinians and 3 Israelis have been killed – nearly all civilians. #Gaza. [This was retweeted by @BBCWorld at 7.54am]

The Committee noted too that the *Guardian* ran a live blog⁶ throughout 15 November 2012 and its 7.35am summary of events so far included the following:

⁶ <http://www.guardian.co.uk/world/2012/nov/15/israel-gaza-militants-deadly-exchanges-live#block-50a55ac095cb549b9c00de9c>

- Israeli aircraft, tanks and naval gunboats pounded the Hamas-ruled Gaza Strip today as Israel continues the operation launched yesterday. Israel targeted a motorcycle carrying a rocket squad, killing one militant and wounding two, a Palestinian health official said. The Israeli military had no immediate confirmation of the report.
- A rocket fired from the Gaza Strip on Thursday struck an apartment building in southern Israel, killing three people, Israeli media said.
- At least 10 Palestinians, including two young children and seven militants, were killed yesterday and more than 93 were wounded. Reuters put the death toll at 13.

The Committee noted that casualty figures rose throughout the day and that by 2.24pm the *Guardian* was reporting:

- Reuters, citing the Gaza health ministry, says the death toll in the enclave since the start of the Israeli operation has risen to 15, including eight civilians among them a pregnant woman with twins, an 11-month old boy and three infants.

The Committee recognised that, as in any fast-moving story of conflict, the true picture became apparent only over time with reports emerging piecemeal from different sources, and they noted Mr Davies' comments that:

"It is not surprising that few agencies or broadcasters had exactly the same figures at exactly the same time, because the number of casualties rose quickly and some of us would have been aware of 'new' additions, simply because we either witnessed those deaths or were quickly on the scene. The 'fog of war' is also something that armchair critics at home rarely experience – we were not covering the State opening of Parliament but a brutal and confusing conflict at the end of which, by common consent, more civilians than combatants were killed on both sides."

The Committee noted that the Editorial Guidelines on Accuracy require BBC output, as appropriate to its subject and nature, to be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The Committee noted, too, that where an issue is controversial, relevant opinions as well as facts may need to be considered and when necessary, all the relevant facts and information should be weighed to get at the truth. The Committee judged that the weighing of all the relevant facts and information can, by definition, take place only when all the relevant facts and information become clear, and this is rarely the case while a conflict is continuing.

In this case, the Committee noted that Mr Davies said his information had come from health officials in Gaza who had told him that "more than half" of the 13 Palestinian deaths were of civilians. This was clearly a source which it was appropriate for journalists to cite. However, there had been no attribution to the source in the tweet itself. The Committee noted the practical considerations specific to Twitter of including attributions within 140 characters.

Nevertheless, the Committee considered it would have been good practice to have attributed the information in this tweet, as Mr Davies had done several times in his previous day's tweets, so as to enable those reading it better to judge its reliability.

The Committee considered whether the expression “nearly all” met the requirement for clear and precise language, taking into account the sensitivities around the subject matter. The Committee noted that the information provided to Mr Davies by Gaza health officials was that “more than half” of the 13 Palestinian deaths were civilians.

The Committee noted that the complainant had said it was not even the case that the majority of the dead Palestinians were civilians. The Committee acknowledged that Associated Press had provided updated figures which said that 15 Palestinian deaths included seven civilians, i.e. that the majority of the Palestinian dead were not civilians but that the majority of both the Israeli and Palestinian dead were civilians. However, the Committee noted that the information provided to Mr Davies by health officials in Gaza indicated that more than half of the 13 Palestinian casualties at that time were civilians.

The Committee strongly believed that audiences would recognise the exceptional pressures and dangers of reporting from a conflict zone, and the fact that in a fast-moving situation information available to journalists would inevitably be superseded as a clearer picture emerged. Indeed, the Committee judged that most of those who use Twitter to follow major breaking news would expect the full picture to emerge only over time and would expect that in a serious conflict, estimates of casualties would go up and down, often for a long period, and that there would sometimes be competing claims before the truth became clear. The Committee considered that the BBC would not remain as the most credible and trusted news provider in the UK if it did not use social media as well as traditional broadcasting to reach those who want their news wherever they are without delay.

Nonetheless, the Committee agreed that the tweet which said that “nearly all” of the reported 16 dead were civilians had gone beyond the information which had been obtained from the Gaza health officials (which was that more than half of the 13 dead Palestinians were civilians), even taking into account that the three reported Israeli dead were civilians. It had therefore constituted a breach of the Accuracy Guidelines. The Committee did not regard this breach as reflecting anything other than the extreme pressure under which Mr Davies and other journalists in Gaza had been working, and it commended the overall quality and integrity of his reporting across various media during “Operation Pillar of Defence”.

The Committee was also clear that there was no breach of the Guidelines’ requirement for the BBC not to knowingly and materially mislead its audiences. The Committee noted that “to knowingly and materially mislead” is a high threshold and the Committee did not consider it had seen evidence that this threshold was met. The Committee noted Mr Davies’ reference to the “fog of war” and the particular circumstances in which the correspondent was reporting. The Committee considered that readers would also have understood that the situation was chaotic and that figures were being constantly updated. The Committee further considered that readers would have been aware of the nature of Twitter, in that it provides a continuous stream of snapshots of information rather than being a bulletin of record as provided on linear broadcast channels.

Point C

The Committee went on to consider the complainant’s point that Mr Davies’ tweet remains as originally posted “when he could easily have deleted the tweet and entered a more accurate one”.

The Committee noted that the BBC's guidelines require "serious factual errors" to be corrected quickly, clearly and appropriately. The Committee was mindful that it did not consider that the language used was clear and precise in this instance and that it had upheld a breach of the accuracy guidelines. However, the Committee did not consider that the breach constituted a "serious factual error". The Committee agreed there were mitigating factors relating to the subject and nature of the content, and the likely audience expectation. The Committee considered that readers would have been aware that Mr Davies was working in a conflict zone and would have understood that this was a chaotic, very fast-moving situation and that figures would be changing. The Committee also considered that readers would have been aware of the particular nature of the Twitter service which provides a minute by minute account and differs from a news channel providing a bulletin of record.

The Committee therefore agreed that, in this instance, there was no requirement under the Editorial Guidelines for the BBC to have issued a correction. However, the Committee wished to thank the complainant for raising this point which the Committee considered raised interesting questions for the BBC about the use of Twitter by its correspondents.

The Committee noted that the complainant had suggested that the original tweet could be deleted. However, whilst Mr Davies could have deleted his tweet, the Committee noted that re-tweets would still have been in circulation (as could tweets of screen-grabs). The Committee noted the BBC's point that Mr Davies had updated his figures to give a clearer picture of the number of civilian casualties on the BBC News Channel at 11.30am:

"There were at least three Israeli civilians killed when one rocket hit a house just across the border, 13 Palestinians killed, at least half of those thought to be civilians."

Trustees were, however, not aware of any research which showed the extent to which Twitter users overlapped with viewers of the News Channel. The Committee was also unaware of any research which showed the expectations of Twitter users with regard to correcting or updating information provided via the service. The Committee noted, however, a submission from the Social Media Editor for BBC News who stated:

"Twitter is not like live broadcast in the sense that a permanent record is created by each tweet, but for users it is akin to live broadcast, as a real-time information network, one that moves at incredible speed. Tweets are not composed or consumed in the same way as a broadcast or website headline. The complainant refers to the tweet as if it would be consumed in total isolation, when Wyre's own subsequent tweets, as well as our wider coverage, provide much broader context and up-to-date information.

"To uphold the complaint would suggest that for all tweeting, from both individuals and 'branded' accounts (ie @BBCBreaking etc), we must continuously be deleting tweets sent in good faith at the time and clarifying them with new tweets, potentially long after the event, as new information emerges on any given news story. It even suggests we should do the same for news stories in our website archive.

"Of course I'm not saying we have to accept any dilution or abrogation of our editorial standards, but it does mean we have to take into account the nature of the medium and apply those standards in a sensible way."

Whilst the Committee therefore concluded that there was no requirement under the Guidelines for the BBC to have issued a correction in this instance, or to have deleted the

tweet and entered a more accurate one as the complainant had suggested, the Committee did consider that the complaint raised important questions about the use of Twitter which would need to be considered further.

The Committee agreed that the BBC Executive was responsible for ensuring that its journalists understand the requirements of due accuracy which apply to the content that they are asked to produce. The Committee noted that there was a growing expectation for BBC journalists to make use of micro-blogging services such as Twitter but that this relatively new medium raises particular questions about the expectations of the audience. The Committee considered that the BBC Executive should give further thought to its strategy for using micro-blogging services as a news medium. The Committee agreed that this work was necessary to ensure that BBC journalists are able to work within the legitimate expectations of the audience in this medium.

Specifically, the Committee wanted the BBC Executive to consider (and if necessary issue guidance on) the use of Twitter by BBC staff, beyond the current guidance. The Committee agreed that the following areas would merit consideration:

- user expectations of BBC content on Twitter
- the impact of the fast moving Twitter environment on requirements of accuracy and impartiality (both BBC and personal accounts)
- the extent to which attributions could and should be made within the practical limits of 140 characters
- whether, and if so, how, inaccuracies could be corrected

The Committee concluded that there was no requirement under the Guidelines for the BBC to have issued a correction in this instance, or to have deleted the tweet and entered a more accurate one as the complainant had suggested.

Point D

The Committee was mindful that it had upheld on accuracy and it noted the complainant's view that in presenting the casualty figures as it had done, the tweet had given the false impression that Israel was mainly killing Palestinian civilians.

The Committee considered whether the tweet gave rise to any breach of the guidelines on impartiality. The Committee noted the wording of the tweet in question:

In this "limited operation" at least 13 Palestinians and 3 Israelis have been killed – nearly all civilians. #Gaza.

The Committee considered that, while it was a breach of the requirement for due accuracy to report that "nearly all" of the casualties had been civilians, the Committee did not consider any of the Guidelines on impartiality had been breached.

The Committee considered that a significant number of casualties on both sides of the conflict were civilians. The Committee also noted that Wyre Davies had been tweeting on the developing situation in Gaza. It noted, for example, the following tweets:

2.03pm

Unconfirmed reports that a senior Palestinian militant (possibly from Hamas) may have been targeted in Israeli air strike on Gaza.

2.11pm

Again, unconfirmed, but it's reported that senior Hamas military figure, Ahmed Jabari, was the target of Israeli airstrike.

2.19pm

Ahmed Jabari is a senior Hamas figure who oversaw the detention of Gilad Shalit. Also held responsible by Israel for directing rocket attacks.

2.46pm

Why now? Because, says Israel, it could not tolerate the firing of 100s of rockets from Gaza. Escalation of violence almost inevitable.

The Committee noted that Mr Davies had updated the figures at 11.30am on the BBC News Channel:

“There were at least three Israeli civilians killed when one rocket hit a house just across the border, 13 Palestinians killed, at least half of those thought to be civilians.”

The Committee noted that, while the tweet complained about had not been clear enough on the level of civilian casualties at that point, Israel's targeting of militants during this operation, and its stated aim of curtailing rocket attacks from Gaza, were mentioned by Wyre Davies and by other BBC tweets throughout the operation and on the day in question.

The Committee considered that the lack of due accuracy in the tweet which was the subject of this complaint likely arose from the particular, fast-paced and chaotic circumstances in which the correspondent was reporting.

The Committee concluded that there was no evidence to suggest that the guidelines on impartiality had been breached by this tweet either in isolation or in the context of the other tweets sent by Wyre Davies or BBC World News.

Finding: Partially upheld with regard to Accuracy. Not in breach with regard to Impartiality.

BBC News Online “Viewpoints: how experts see UK role in EU”

1. Background

“Viewpoints: How experts see UK role in EU” is part of an occasional online series, the purpose of which is to give the audience informed insights from non-BBC experts.

The article at the centre of this complaint was headlined “How does the UK fit into the EU’s plans for closer economic and political integration?” It also stated “BBC News asked some prominent European politicians and analysts for their views on the UK’s role in the EU and whether it would make sense for the UK to leave”.

2. The complaint

The complainant alleged the article was biased because it did not provide an adequate range of opinion. Specifically, he said it included only “pro-EU” voices, it did not include an expert who believed the UK should withdraw from the EU, and did not reflect public opinion in Europe.

Stages 1 and 2

The complainant received replies from BBC Online at Stage 1 and the issues raised by the complainant were not upheld by the Editorial Complaints Unit (ECU) at Stage 2 of the complaints process.

Appeal to the Trust

The complainant appealed to the Trust reiterating his original complaint. He said that the article was “extremely one sided in giving 7 pro EU voices free reign to articulate their opinions, with no counter balancing views expressed.” He noted that the ECU had agreed that there was a unanimity of views on the panel and he re-stated his view that this was because of “defective criteria for being considered an EU expert by the BBC”, which he described as “the root cause of the bias” and “fundamentally incompatible with editorial independence”.

The complainant said that all seven experts selected to provide their views in this article were representative of stakeholders in the EU, and public opinion in Europe was not represented. He referred to French opinion polling which showed that 52% of the population are in favour of the UK leaving the EU.

The complainant said:

“I therefore appeal to the BBC Trust to ... begin to restore some faith in BBC Brussels coverage which is widely perceived in the country to exhibit a systemic pro-EU bias of which this article is but one example.”

The complainant’s appeal raised four allegations in relation to the online article:

1. The article stated that it sought opinion about the UK’s relationship with the EU and its possible withdrawal among European experts (not experts from mainland Europe) so there should have been a UK perspective, given Britain is in Europe.

2. The article lacked balance and did not represent a range of views because it gave the opinions of 7 pro-EU voices and no balancing views, in particular no voices saying that the UK should leave the EU.
3. The selection criteria of interviewees was flawed and led to bias because they were all stakeholders in the EU, dependent on its preservation for their work and income and a disproportionate number were based in Brussels.
4. The article did not represent the state of public opinion in Europe.

3. Applicable Editorial Standards

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The sections on Accuracy (Section 3) and Impartiality (Section 4) are 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 subsequent submissions from the complainant and the BBC.

Point (1) – Because the article stated it had asked the views of European experts (and not mainland European experts), there should have been a UK perspective.

The Committee noted the complainant's allegation that, as the article stated that it sought opinion about the UK's relationship with the EU and its possible withdrawal among European experts, rather than experts from mainland Europe, there should have been a UK perspective.

The Committee noted that BBC Online's response to this allegation at Stage 1 was that their purpose had been to "get a range of opinion from non-British European politicians and experts" and that the article "never set out to reflect the current state of the debate in the UK". The ECU Complaints Director stated at Stage 2 that "It ... seems clear that the intention was to reflect the state of opinion in Europe, and not actually in the UK itself".

The Committee noted the wording of the headline and the introductory text of the article:

Viewpoints: How experts see UK role in EU

How does the UK fit into the EU's plans for closer economic and political integration?

Many British MPs want Prime Minister David Cameron to call an "in or out" referendum and opinion polls suggest many British voters are disillusioned with the EU.

BBC News asked some prominent European politicians and analysts for their views on the UK's role in the EU and whether it would make sense for the UK to leave.

The Committee noted that, although the article referred to "European politicians and analysts", BBC Online's initial response indicated that their objective had been to "canvass

how Britain's neighbours feel about the prospect of Britain leaving the EU" and they subsequently clarified that views were sought from "non-British European politicians and experts".

The Committee considered the section of the Editorial Guidelines on Accuracy. Taking account of the subject and nature of the content and readers' likely expectation, the Committee agreed that there had been no breach of the accuracy guidelines in this instance.

The Committee accepted that "European politicians and analysts" could include those from the UK. The Committee considered that it was not, however, inaccurate to say that "some prominent European politicians and analysts" had been asked for their views, as this was indeed the case.

Furthermore, the Committee considered that, in setting out the position of British politicians and the public immediately before stating that BBC News had asked some prominent European politicians and analysts for their views, it was implicit in the introductory text that the article was dealing with opinion from mainland Europe and not in the UK.

The Committee therefore concluded that the article was duly accurate in this regard.

(Point 2) – Regarding the alleged lack of balance in not including a view that the UK should leave the EU.

The Committee noted that the complainant had said that "all the figures selected are of the same opinion on the constitutional issue ... i.e. the supremacy of Brussels decision-making in the member-states like the UK".

The Committee noted the complainant's argument that "the opinion that Britain should leave the EU is frequently expressed by politicians in Brussels and Continental capitals" and that he had referred to an article in the *Daily Telegraph* newspaper from 10 December 2011 which included one of the featured interviewees, Martin Schulz, who had then been reported as saying "I doubt in the long term that Britain will stay in the EU". The Committee noted that the complainant argued that "the BBC has been highly selective in its choice of 'experts' resulting in a one sided 'In' polemic".

The Committee noted the complainant's reference to a BBC Online article published on 14 January 2013 which quoted Caroline Fuchs, former correspondent of Stern magazine, saying on *Newsnight* that "there are already people (in Germany) who say if they (the British) don't want to be here, they should get out".

The Committee noted that the ECU Complaints Director stated at Stage 2 that there was plainly a degree of unanimity in the article around the proposition that it would not make sense for the UK to leave, so "the question is whether any significant point of view to the contrary has been excluded". He had put this to BBC Online who had responded that it was hard to identify any significant current of thought which believes that the UK should leave. The Committee noted that BBC Online had said:

"...to address [the complainant's] core complaint – that voices should have been sought who would have provided an 'out' voice – we need to look at who these people might be. Two of the most influential, nationalist, Eurosceptic parties in Europe – France's National Front and the Finnish True Finns – support Mr Cameron's call for a referendum, but do not advocate the UK leaving the EU. In

other words, their position is not the same as UKIP's. They leave the UK's future role – whether in or out of the EU – an open question.

“Marine Le Pen of the National Front explained her party's position on this to Newsnight here: <http://www.bbc.co.uk/news/world-europe-21354779>

“And when (we) interviewed Sampo Terho of the True Finns, he put it like this: ‘It would be a significant change if the UK left, but not a blow or disaster. He's absolutely right that our main target should be to reform the EU so that it does not regulate so much.’

The Committee noted the ECU's conclusion that:

“...whilst it might have been possible to locate a non-UK European voice somewhere saying that the UK should leave, this point of view is so rare amongst the group whose views were being sought that it would have been a gratuitous exercise in achieving a notional balance of opinions that did not really reflect the actual balance amongst the target group whose views were being sought.”

The Committee noted the opinions of three external experts, consulted in the investigation of this complaint and appeal, on the existence of European voices saying the UK should leave. The Committee noted that these experts had expressed the following views:

- “there is, amongst the elites of continental Europe, very little constituency for the view that Britain's or the EU's interests would be best served by Britain's exit from the European Union”
- “Wanting the UK to pull out is not a significant view in the rest of Europe... Most countries say just change it to work better”
- “(In Europe) I have not seen echoes of UKIP on the UK pulling out... Eurosceptic parties are not calling for the UK to get out.”

The Committee considered that the opinions given in the article were nuanced. While none of the interviewees quoted stated that the UK should leave the EU, not all were forthright, the Committee noted, in saying that it should remain. Comments were nuanced in, for example, considering aspects of self interest in keeping a “reforming” UK within the EU. The Committee considered that three of the interviewees were reasonably unequivocal that the UK should remain in the EU, although they made their judgements from different perspectives.

The Committee noted that the external experts consulted in the investigation agreed that there are no political parties in mainland Europe advocating that their own country – or any other country – should leave the EU. The Committee noted too that “Euroscepticism” can have a different meaning in the UK and in mainland Europe, and that in the latter, the term tends not to include a position advocating withdrawal whereas in the UK it does.

The Committee concluded that wanting the UK to leave the EU was not a significant strand of opinion among the contributors chosen to answer the key question posed in the first sentence of the article, how the UK would fit into the EU's plans for closer integration.

The Committee considered the section of the Editorial Guidelines on Impartiality. The Committee noted the requirement for due impartiality means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted too that there are particular requirements where content deals with a controversial subject.

The Committee agreed that the subject of the UK's membership of the EU was a controversial one within the meaning of the Editorial Guidelines. The Committee noted the Editorial Guidelines say that:

4.4.8

Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed. When dealing with "controversial subjects" this should be clearly signposted, should acknowledge that a range of views exists and the weight of those views and should not misrepresent them.

The Committee noted that the article had clearly stated that:

"Many British MPs want Prime Minister David Cameron to call an 'in or out' referendum and opinion polls suggest many British voters are disillusioned with the EU."

The Committee considered that the article had clearly signposted the aspect of the issue that it was exploring, and it had acknowledged that a range of views exist in Britain on the general issue of EU membership.

The Committee considered that the way in which BBC Online chose to report an issue was a matter for them, as long as they could demonstrate editorial justification and as long as it met the editorial standards set by the Trust.

The Committee noted the guideline clause 4.2.5 which states that programme makers have the editorial freedom

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

The Committee noted guideline clause 4.4.2 which states that

"...impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead we should seek to achieve 'due weight'. For example minority views should not necessarily be given equal weight to the prevailing consensus."

The Committee also noted clause 4.4.7, relating to controversial subjects, which states that:

"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."

The Committee noted this may be in an item or over a series or over the time that a controversy is active. The application of this guideline can change depending on how active the controversy is.

The Committee considered that the BBC had made a legitimate editorial choice in choosing to reflect the opinion of politicians and analysts in mainland Europe, and that the absence of an opinion specifically advocating UK withdrawal from the EU did not mean that "anti EU" voices had been excluded as the complainant alleged. Rather, the Committee considered that the views of some of the experts expressed in the article reflected what constitutes Euroscepticism in the context of mainland European political opinion, which favours reform of the EU rather than withdrawal.

The Committee agreed that UK withdrawal from the EU was not a significant opinion within the narrow aspect of the subject that BBC News had chosen to explore in this article (i.e. seeking views of non-British experts and politicians on the question of how the UK would fit into the EU's plans for closer integration).

The Committee concluded that BBC Online had achieved due impartiality in a way that was adequate and appropriate to the output taking into account the subject and nature of the content and likely audience expectation.

The Committee was mindful, however, that it was important that a broad range of subject matter and perspectives were reflected over time, as stipulated by guideline clauses 4.2.3 and 4.2.4.

In this respect, the Committee noted several examples of BBC Online covering various strands of thinking and opinion in mainland Europe about the EU:

- The Front National in France: <http://www.bbc.co.uk/news/world-europe-21354779>
- The view of a nationalist 'True Finns' MEP: <http://www.bbc.co.uk/news/world-europe-21140766>
- Experts commenting on the awarding of the Nobel Peace Prize to the EU: <http://www.bbc.co.uk/news/world-europe-19924216>
- European Eurosceptic opinion: <http://www.bbc.co.uk/news/world-europe-22396875>
- The BBC News Europe Editor's blog: <http://www.bbc.co.uk/news/world-europe-22431858>
- The rise of the Eurosceptic Alternative party in Germany: <http://www.bbc.co.uk/news/world-europe-22141618>.

Point (3) – Regarding the allegation that the selection criteria of interviewees was flawed and led to bias.

The Committee noted the complainant's argument that the selection criteria of interviewees was flawed and led to bias because they were, in the complainant's view, all stakeholders in the EU, dependent on its preservation for their work and income, and, the complainant said, a disproportionate number were based in Brussels and therefore would be unlikely to say the UK should withdraw or advocate the EU losing scale or significance.

The Committee noted that it would be highly likely that the interviewees approached to comment on closer EU integration, the legitimately chosen subject matter of the article,

would be more likely to live in Brussels and/or be connected to the EU. This, the Committee noted, did not prevent them holding a range of views about either the reform of Europe or indeed the possibility of the UK leaving.

However, the Committee also noted the viewpoint of one expert contacted by BBC Online, in speaking of the political elites of Europe, to the effect that "there's a limit to how far they will go to keep Britain on board. But it's beneath the surface – they don't like to say it on the record".

The Committee concluded that it would be unreasonable to expect the BBC to reflect opinions which might not be publicly aired in an article setting out public statements on the EU and the UK, however much that might be possible in another format or context.

The Committee did not agree that the selection criteria of the interviewees was flawed and led to bias. Having regard to the requirements of the Editorial Guidelines relating to Impartiality, the Committee concluded there was no breach of the Guidelines in this respect and that for the reasons explained above, the article was duly impartial.

Point (4) – Regarding the allegation that the article did not represent the state of public opinion in Europe.

The Committee considered the complainant's argument that the article should have represented public opinion in Europe. The Committee noted the complainant's reference to a recent opinion poll which showed that a majority of the French population are in favour of the UK leaving the EU.

The Committee reiterated the point that the overall premise of the article was about how the UK fits into the EU's plans for closer economic and political integration, and that it had sought the opinion of politicians and experts from mainland Europe.

The Committee noted that the Viewpoint article had, in passing, referred to public opinion in the UK and polls suggesting "many British voters are disillusioned with the EU".

The Committee noted that BBC Online, in response to the appeal investigation, had stated that the French opinion poll referred to by the complainant was not published until after the publication of the Viewpoint article, after David Cameron's speech of 23 January 2013 promising an "in/out" referendum, which they believe would have influenced opinion; and that in any case, another poll on the same day had indicated a majority of the French population did not want the UK to leave the EU.

The Committee considered that it was, in any case, a justifiable editorial judgement, within the overall premise of the article, to limit gathering of opinion to politicians and experts.

Having regard to the Editorial Guidelines on Impartiality, the Committee concluded that, taking into account the subject and nature of the content, signposting and legitimate editorial justification, there was no breach of any of the guidelines.

Finding: Not upheld

BBC News at Six, 28 November 2012

1. Background

In November 2012 the England football team manager, Roy Hodgson, travelled to Brazil in anticipation of the England team qualifying for the World Cup finals, which are due to be held there in 2014. Mr Hodgson was interviewed in Brazil, and the interview was broadcast in the BBC *News at Six* on 28 November 2012. During the course of the interview, which was mainly about the England team's preparations, he said: "Everyone tells me how highly England is regarded as a country [here] because, as you know, it was an Englishman who brought football to the country."

2. The complaint

The complainant said that Mr Hodgson was wrong to state that an Englishman had first brought football to Brazil. The complainant argued that, whilst it had long been thought that it was a Charles Miller (commonly believed to be an Englishman) who had first introduced football to Brazil, recent research revealed that it was in fact a Scotsman, Thomas Donohue. Hence, the complainant said that the BBC should broadcast a correction to set the record straight.

Stages 1 and 2

The complainant first raised the matter through the feedback log and then formally complained. BBC Complaints responded by saying that the BBC was not able to control what interviewees might say and also suggested that the origins of football in Brazil were not clear cut. The complainant was not satisfied with this response and his complaint then went to the Editorial Complaints Unit (ECU). The ECU, after an investigation, did not uphold the complaint since the issue itself was not straightforward and it was not the central focus of the interview. Hence, no on-air apology was required.

Appeal to the Trust

The complainant appealed to the Editorial Standards Committee of the Trust. He reiterated his complaint about Mr Hodgson's interview and appealed to the Trust against the decision by the ECU not to accept that a serious breach of the guidelines had been committed which had been compounded by the BBC's failure to correct the impression that "an Englishman was responsible for introducing football to Brazil".

The complainant's appeal was fundamentally one of inaccuracy. He argued that a Scotsman – Thomas Donohue – first introduced football to Brazil and that even if the BBC did not accept this claim and continued to maintain that Charles Miller was the real "father" of Brazilian football, then he too should have been referred to as Scottish. Hence, quoting Guideline 3.2.3, the complainant argued that the BBC had breached its commitment not to "knowingly and materially mislead its audience".

Second, the complainant stated that under Guideline 3.2.4 the BBC had an obligation to "acknowledge serious factual errors and correct such mistakes quickly, clearly and appropriately". He said that it was "manifestly unfair to perpetuate the untruth that an Englishman was responsible for introducing football to Brazil". He argued that by failing to correct this error the BBC was being "disrespectful to the Scots minority in the United Kingdom and is particularly difficult to understand in the current political climate".

3. Applicable Editorial Standards

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The section on Accuracy (Section 3) is particularly 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 a subsequent submission from the complainant.

Point A - that it was incorrect to say an Englishman had first brought football to Brazil

The Committee noted that the complainant said that Mr Hodgson's statement, that an Englishman had first brought football to Brazil, was factually incorrect. The Committee noted the complainant's argument that, according to research undertaken in 2011 by the Scottish Museum of Football at Hampden Park, it was a Scotsman – Thomas Donohue – and not, as commonly believed, Charles Miller who had brought football to Brazil. The Committee noted the complainant's further argument that, even if Mr Hodgson had been unaware of Mr Donohue's role, it would still be wrong to describe Charles Miller as English, since his father was Scottish.

The Committee considered whether the reference complained of was, in the context of this interview, duly accurate. The Committee noted that the term "due" means that accuracy must be adequate and appropriate to the output in question, taking into account the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted that, as appropriate to its subject and nature, BBC output must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The BBC also must not knowingly and materially mislead its audience.

The Committee noted that the BBC had accepted that it was correct to say that Donohue had preceded Miller in introducing football to Brazil, by six months, but nonetheless it was reasonable to regard Miller as the "father" of Brazilian football since he had made substantial efforts to promote the game in Brazil, whilst Donohue had done less.

On the issue of Miller's nationality, the BBC had argued that because he was educated in England and had then returned to England and lived there for most of the rest of his life (although he actually died in Brazil) it was not unreasonable to refer to him as English.

As to "due accuracy" the Committee noted that the ECU had argued that an inaccuracy had to significantly mislead the audience on a material point before it would fail the requirement for due accuracy.

The Committee noted that Mr Hodgson had not specified who he was referring to when he said it was an Englishman who had brought football to the country, but the Committee considered that it was reasonable to assume that he was speaking about Charles Miller as Mr Miller was long considered the founder of football in Brazil, and the published works consulted by the Trust's independent editorial adviser attribute this to Mr Miller.

The Committee noted that Mr Miller established the framework of the rules (based on the rules of the English Football Association) and organised the first leagues in the country in Sao Paulo. One source (Bellos) calls him "the official progenitor"⁷. Whilst at the entrance to Sao Paulo football stadium there is a plaque that reads: "To Charles Miller 1874 – 1953. Introducer of Association Football. A tribute from the British community Sao Paulo".⁸

The Committee noted, however, that in 2011 an archivist at the Scottish Football Museum, at Hampden Park unearthed evidence that a Thomas Donohue had arrived in Brazil six months before Miller and had begun organising a match in Bangu, a settlement outside Rio de Janeiro.⁹

The Committee noted that the evidence suggested that Donohue was in Brazil six months before Miller, and that he began organising matches there. Donohue was based at Bangu, then a settlement (now a suburb) more than 20 miles outside of Rio de Janeiro, where he founded a club and league. Although the evidence suggested Miller came to Brazil after Donohue, the Committee noted he founded a club and league in Sao Paulo which was Brazil's largest and most important city. The Committee noted that this was the likely reason for Mr Miller's contribution becoming better known and recorded since a new sport being played in Bangu, a small town some miles from Rio, would probably not have captured the same level of national attention as Mr Miller's Sao Paulo-based league did.

The Committee noted, however, that the consensus of academic research suggested that neither man could rightfully claim to have "brought" soccer to Brazil. According to one source (Lopes): "...the first football games on record in Brazil were played by English sailors ... and sporadically among employees of English firms". These games took place in and around Sao Paulo, and Lopes dates them to the 1840s.¹⁰

The Committee noted that another source (Lacey), on the other hand, suggests that the originators of football in Brazil were in fact Jesuit teachers at a school at Itu near Sao Paulo who, after a visit to Harrow School, returned with a football and organised matches for their students some twenty years before the arrival of either Mr Miller or Mr Donohue.

The Committee noted that when Mr Hodgson gave the interview it was a widely held belief that Charles Miller was the originator of football in Brazil and that he was English. However, the Committee considered that the answer to the question of who in fact originated Brazilian Football is extremely unclear. There is historical evidence that 40 or 50 years before either Mr Donohue or Mr Miller arrived, football was being played in Brazil by expatriate English workers and at a Jesuit school. Secondly, whilst it is true that Mr Donohue did arrive in Brazil six months before Mr Miller, the claim that he was the sole progenitor of Brazilian soccer remains debateable for the reasons outlined above.

The Committee concluded that there was no definitive answer to the question of who first brought football to Brazil. Trustees considered that it would have been better if the BBC

⁷ Bellos, A. (2002) *Futebol: the Brazilian Way of Life*, Bloomsbury p. 28

⁸ Mills, J. (1994) *Charles William Miller and the Sao Paulo Athletics Club* Price Waterhouse p. 98

⁹ <http://www.heraldscotland.com/sport/more-scottish-football/new-research-reveals-the-scottish-dye-worker-who-brought-football-to-brazil-117-years-ago-exclusive-1.1092220>
<http://www.heraldscotland.com/sport/more-scottish-football/boys-from-brazil-are-all-busby-babes-1.1092218>

¹⁰ Lopes, S. T. (2000) *Class, Ethnicity, and Color in The Making of Brazilian Football in Daedalus, Journal of the American Academy of Arts and Sciences*

had acknowledged early in the complaints process that the research did, at the very least, throw the widely held belief that Charles Miller first brought football to Brazil, into doubt.

Notwithstanding the differing evidence as to who brought football to Brazil, the Committee considered it likely that Mr Hodgson was referring to Charles Miller (because Mr Miller was widely considered to have brought football to Brazil) and it therefore considered the second aspect of the complaint, the extent to which he could be regarded as English.

The Committee noted that neither of the biographies of Mr Miller consulted by the Trust's independent editorial adviser gave a definitive ruling on this. Mr Miller was born of a Scottish father and a Brazilian mother. Mr Miller's mother was English by descent and, according to a source (Lacey), a member of "Sao Paulo's best-connected English family"¹¹. The same source also said that Mr Miller "... might have been born in Brazil but he learnt his game in England."¹²

The Committee noted that Mr Miller was educated in England and returned there from Brazil, where he lived much of the rest of his life. Another source (Stratton-Smith) described him as "an English lad"¹³. The Committee also noted that the report in the *Herald*, revealing Mr Donohue's role, said: "Brazilians were not introduced to football by Charles Miller, an Englishman, as most records state."

As with the question of who brought football to Brazil, the Committee agreed that the question of whether Charles Miller should be regarded as Scottish or English was also far from straightforward. However, the Committee was of the view that in referring to an "Englishman", Mr Hodgson was expressing a common belief, widely held in both Brazil and the UK, that Mr Miller was English.

In considering the context in which Mr Hodgson's statement was made, the Committee noted that it was in a BBC News at Six report on England's prospects in the coming World Cup. The Committee noted the news presenter's introduction to the report:

Fiona Bruce: England can win. That was Roy Hodgson's optimistic message as he toured facilities in Brazil ahead of football's World Cup 2014. The England manager has been seeing the country's approach to the game first hand and he's been speaking exclusively to our sports correspondent Dan Roan.

The Committee noted that Mr Hodgson's statement came in a section which immediately followed the sports correspondent's reference to him visiting charity projects in Rio's favelas and wanting his players to follow suit:

Roy Hodgson: We wanted to get involved in as much charity work as we could because everyone tells me how highly England is regarded as a country because, as you know, it was an Englishman who brought football to the country.

The Committee was of the view that Mr Hodgson's statement about the origins of football in Brazil was simply an expression of a view that was widely held at the time he made his comment and, whilst what he said might not have been strictly accurate in terms of the most recent research, in the context of an interview about England's prospects in the

¹¹ Lacey, J. (2005) *God is Brazilian: the man who brought football to Brazil* Tempus p. 36

¹² Lacey p. 147

¹³ Stratton-Smith, E. (1963) *The Brazil Book of Football Soccer Book Club* p. 11

coming World Cup, the Committee concluded that it was duly accurate. The Committee agreed that, given the subject and nature of the content, the audience could not have had an expectation that they would be hearing an authoritative view on Brazilian soccer history, nor would there have been any reasonable expectation that the BBC should have signposted this fact. This aspect of the appeal was not upheld.

The Committee further concluded that the BBC did not “knowingly and materially mislead its audiences”. The Committee considered the BBC had no reason to doubt the facts behind Mr Hodgson’s statement. Further, noting that the origin of football in Brazil was not the central focus of the interview, and that Mr Hodgson was expressing a widely held belief, the Committee did not consider that the audience would in any event have been materially misled.

Point B – that the BBC should have corrected the inaccuracy

The Committee noted the complainant’s view that, because the BBC had broadcast what he regarded as erroneous information, it should have corrected it in a subsequent news programme. The Committee noted the complainant’s claim that, “left uncorrected, it has significantly misled the audience on a material point”. He said that by its continued refusal to correct the error the BBC was in breach of the Editorial Guidelines. The Committee noted that the complainant said:

“The BBC’s unwillingness to use a suitable opportunity to correct a factual error on the six o’clock news and thus perpetuate the myth that the English, rather than the Scots, introduced football to Brazil is disrespectful to the Scots minority in the United Kingdom and is particularly difficult to understand in the current political climate.”

The Committee noted the BBC’s view that because they had achieved due accuracy, no correction was required.

The Committee noted that, in addition, the BBC had argued that even if their arguments about why due accuracy had been achieved were not accepted, the matter could not be regarded as “serious” and nor could they be said to have “knowingly and materially” misled the audience. Hence, in the BBC’s view, no correction was required. The Committee noted that the Editorial Guidelines require the BBC to acknowledge “serious factual errors” and correct them quickly, clearly and appropriately. In the light of its decision that due accuracy had been achieved, the Committee agreed that no correction was required. The Committee further agreed that whatever the rights and wrongs of the description of the origin of Brazilian football, the reference in this context could not, in any event, be said to be “a serious factual error”.

Having considered this particular complaint, the Committee agreed that it raised a broader issue of the extent to which the BBC should be held responsible for the accuracy of statements made by contributors. The Committee wanted to draw attention to the impracticality of expecting the BBC to check or know the factual background to all opinions stated by interviewees. Whilst the BBC may be expected to prepare for interviews and probe and test controversial opinions or assertions which are material to the subject of an interview, the Committee noted that the BBC is not able (or required) to challenge every disputed fact or opinion. This is the case even when the subject under discussion is the main subject of an interview. The Committee considered that interviews would become unintelligible and lose track of their main subject if the BBC persisted in challenging every disputable point raised. Nor can it be expected that every producer, reporter and editor will be aware of all disputed facts and in a position to challenge them. The Committee further agreed that it is in the interests of licence fee payers that interviewees are allowed to pursue an argument and express views without being

continually checked and questioned on all points. It can also be helpful to expose error by allowing people to expound their views uninterrupted. When an opinion is an aside or a brief comment, as in this case, it is even less likely that the BBC will be in a position to be aware of all the detailed arguments and able to probe the comment or edit it out of the item.

The Committee noted the over-arching requirement for “due accuracy”. The Committee agreed that the BBC could not be held responsible for the accuracy of every statement made by every contributor who expressed an opinion in its output, although the BBC should not knowingly and materially mislead its audience. The Committee agreed that this also did not diminish the BBC’s responsibility to acknowledge serious factual errors and correct such mistakes quickly, clearly and appropriately.

Finally, the Committee noted that the complainant said:

“The BBC's unwillingness to use a suitable opportunity to correct a factual error on the six o'clock news and thus perpetuate the myth that the English, rather than the Scots, introduced football to Brazil is disrespectful to the Scots minority in the United Kingdom and is particularly difficult to understand in the current political climate.”

For the reasons given above, the Committee considered the content complained of was duly accurate and it did not consider that the BBC was required to issue a correction. However, the Committee was mindful that in addition to achieving due accuracy, BBC output must also be duly impartial.

The Committee noted that (as with due accuracy) the term “due” meant the impartiality had to be adequate and appropriate, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted that the omission of an important perspective in a particular context may jeopardise perceptions of the BBC’s impartiality, and that BBC output as a whole must be inclusive, reflecting a breadth and diversity of opinion.

The Committee agreed it had seen no evidence of a breach of the Impartiality Guidelines in this case. The Committee considered given the context, subject and nature of the interview reported, the likely audience expectation, and the fact that Trustees had found the statement complained of to be duly accurate, due impartiality had been achieved.

Finding: Not upheld

QI, BBC Two, 11 January 2013

1. The programme

QI is a well-established comedy panel game hosted by Stephen Fry. It is now in its 10th year.

The last item of the programme in question was about limericks. Stephen Fry ended the programme reciting the following limerick:

There was a young chaplain from King's
Who talked about God and such things
But his real desire
Was a boy in the choir
With a bottom like jelly on springs.

2. The complaint

Stages 1 and 2

The complainant contacted BBC Audience Services objecting to the recitation of the limerick by Stephen Fry. She felt that the BBC showed a lack of understanding of what the limerick implied. The complainant said that the limerick trivialised the subject of paedophilia.

The Executive Producer replied that it was not the intention to deliberately cause offence, but it was a well-known limerick and limericks are often rude and suggestive. Although it was broadcast in January 2013, the Executive Producer explained that the programme had been recorded in May 2012.

The complainant responded saying that under no circumstances should paedophilia be "a subject for laughter".

BBC Audience Services replied stating that the production team had no further comments to add but said that "in light of your comments they'll be more mindful of this in future shows".

The complaint was escalated to the Editorial Complaints Unit (ECU). The ECU did not uphold the complaint but the Complaints Director was concerned about the surrounding news context (the allegations of child abuse made against Jimmy Savile) and said he would raise this with senior editorial staff at BBC Television.

Appeal to the Editorial Standards Committee of the BBC Trust

The complainant escalated her complaint to the BBC Trust, forwarding her previous correspondence with the BBC.

3. Applicable Editorial Guidelines

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The section on Harm and Offence (Section 5) 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 decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and subsequent submissions from the complainant and the BBC.

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. The Committee considered whether the BBC had met generally accepted standards regarding potentially offensive content, taking into account the likely expectation of the audience and whether any offence was likely to be caused by the inclusion of this particular content in this programme. The Committee also considered whether the heightened sensitivities regarding crimes of paedophilia at this time would have affected audience expectations.

The Committee noted the complainant's argument that the limerick was inappropriate for broadcast because of its sexual connotations linked to paedophilia.

The Committee noted the context in which the limerick was recited. It was the last item of the programme. The panel recited limericks they had composed for the programme and Stephen Fry then commented:

"The strange thing about limericks is no one knows why they are called limericks ... but they are and continue to be popular and sometimes excessively rude.

There was a young chaplain from King's
Who talked about God and such things
But his real desire
Was a boy in the choir
With a bottom like jelly on springs."

The Committee noted that the programme which followed *QI* at 10.30pm was *Newsnight* and that *Newsnight's* lead story was the publication of a report that day summing up the allegations against Jimmy Savile. The Committee also noted that on 11 January 2013, the same day as the broadcast of *QI*, BBC News published a story on the publication of the report *Giving Victims a Voice*. This was a joint Metropolitan Police and NSPCC report concerning the allegations of sexual abuse made against Jimmy Savile under Operation Yewtree.

The Committee noted BBC Television's response to the independent editorial adviser's question of whether audience expectations were fully considered given the extremely high profile of the Jimmy Savile story on the BBC that day:

"The inclusion of the limerick in the context of the Jimmy Savile story was discussed by the Executive Producer for the BBC and the Controller, Entertainment Commissioning, in October, shortly after the completed series had been filmed, edited and delivered, and the Jimmy Savile story had come to the public's

attention. The content, context in which it appeared and editorial justification were all taken into consideration.

"The likelihood of causing offence was, we acknowledge, increased by the news agenda on the day of broadcast. However, the comparisons that can be drawn between the scenario described in the limerick and the nature and extent of the abuse perpetrated by Jimmy Savile are, in our view, limited. The tone was light and inoffensive and, for the reasons outlined above, we believe the content was in keeping with the well-established expectations of the *QI* audience."

The Committee noted BBC Television's explanation about the context in which the limerick was recited:

"*QI* has been running for ten series, over ten years. It is broadcast at 10pm on BBC Two and is one of the channel's best known and most popular programmes. It is presented by Stephen Fry – a comedian known for his acerbic wit, intellectual prowess and occasionally suggestive sense of humour. As such, the series is firmly aimed at a sophisticated adult audience.

"In the episode, Stephen asked the guests to compose a limerick to be read out at the end of the quiz. After the guests had presented their limericks, Stephen noted the unknown origin of the term 'limerick' and remarked that they 'continue to be popular and sometimes excessively rude' before reciting an unscripted limerick he knew."

In its response to the Trust's investigation, BBC Television also felt that the gap between the limerick's recitation and the *Newsnight* headlines should be taken into account:

"It should also be noted that although the limerick featured quite late in the running order, it was within the main body of the episode – before the final scores had been given and before Stephen's closing remarks. The episode was followed by trails for *The Sarah Millican Television Programme*, *Masters Snooker* and the BBC iPlayer. In total, there was a gap of around 2 minutes 50 seconds between the conclusion of the limerick and the start of the BBC Two ident which immediately preceded *Newsnight*."

BBC Television also said:

"Furthermore, the BBC Two schedule does not operate in isolation. The scheduling of *QI* at 10pm on BBC Two is complemented by the scheduling of *The Graham Norton Show* at 10.35pm on BBC One. This is a logical switch for viewers seeking light relief on a Friday night. In fact, on this occasion the continuity announcement during the *QI* credits specifically invited *QI* viewers to turn over to BBC One to watch Alan Davies (a stalwart of *QI*) on *The Graham Norton Show*. *Newsnight* at 10.30pm on BBC Two and the *BBC News at Ten* on BBC One complement each other in a similar manner."

The Committee noted that the BBC had previously commissioned a report considering the area of taste and standards in the media [*Taste and Standards: qualitative research (2009)*]. The report examined attitudes to regulation and the BBC's role in this area. One of its conclusions was:

"The challenge for the BBC therefore remains complex. The majority understand that it should make entertaining and challenging programmes which reflect society and strengthen the corporation's position as a viable broadcaster for

future generations. They also expect it to do so in a more considered and responsible way than other broadcasters.”

The report looked at the effect of context on audience expectations in different genres, including comedy:

“The context provided by a particular type of programme has a strong impact on audience expectations. This affects the way in which issues such as strong language or content are judged.

Comedy

Comedy is arguably the most complex genre for the audience in this area of taste and standards. It is an extremely wide-ranging genre and opinions are often very subjective. Individual taste may permit or sanction what others may feel is in poor taste. For the majority, comedy overall comes with its own licence and even more specifically, each style of comedy/comedian has their ‘own’ licence; although this does not make them immune to perceived lapses in taste if they are felt to be out of step with expectations of the programme audience.

...

Mockery

Audiences draw a distinction between a more derisive, potentially bullying tone and mockery, and as with the comedy genre, taste makes judgement quite subjective. How a line is delivered, and by whom, are crucial factors which define content as acceptable or unacceptable.

The absence of very strong language (the f-word) and lack of aggression are key discriminators, as is the personality of different presenters.”

The full report is available at

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

The Committee noted that the complainant did not believe that this limerick should have been broadcast because of the seriousness of paedophilia. The Committee noted the complainant’s view that under no circumstances should paedophilia be “a subject for laughter”. The Committee noted the complainant’s view that broadcasting it during adult viewing time did not make it acceptable, nor did the fact that the programme was made before the Jimmy Savile case came to light. The Committee noted that the complainant said she was not asking for a ban on all serious and painful subjects as the subjects of humour, but that it was a matter of the unacceptability of using the subject of paedophilia for humour.

The Committee was clear that it did not agree that any particular subjects were absolutely off-limits for humour, but that vital factors such as the context, the intention, and the audience expectation, should be taken into account when considering whether potentially offensive material was editorially justified.

In this case, the Committee considered that the object of the humour was the hypocrisy of a chaplain, and not the act of paedophilia. Within this context, the Committee believed that viewers of *QI* would understand the purpose of the limerick, and that Stephen Fry had used it as an illustration of their outrageousness, and not as a way of condoning the

sexual abuse of children or making light of the suffering of victims of paedophilia. The Committee considered that viewers of this programme would have made this distinction. On this basis, the Committee concluded that the limerick would not have exceeded generally accepted standards given the audience expectations of this programme and its host, Stephen Fry.

The Committee, though, did believe that the timing of this episode before the *Newsnight* report on the Jimmy Savile case was unfortunate and regrettable. The Committee understood that the proximity of the two items was capable of causing offence and it considered that the decision to proceed was finely balanced. However, it was persuaded that most viewers would not consider the limerick's content strong enough to find a resonance in the *Newsnight* report. It considered this was at the margins of acceptability given the heightened sensitivities surrounding the Jimmy Savile case, but, on balance, and taking into account the factors above, the Committee concluded that the programme was not in breach of the BBC Editorial Guidelines. The Committee endorsed the ECU's action in bringing this case to the attention of senior editorial staff at BBC Television given the juxtaposition of this show with the *Newsnight* report.

Finding: Not upheld.

Charlie Sloth, BBC Radio 1Xtra, 19 February 2013

1. The programme

Charlie Sloth is a hip-hop artist and DJ who took over the Radio 1Xtra drivetime show in September 2012. He broadcasts on Radio 1Xtra between 4pm and 7pm on Monday to Thursday. Since it started in 2002, Radio 1Xtra has been targeted at a young, predominately urban, audience and is described on the BBC website as "celebrating the best in urban music".

The programme in question included a conversation between Mr Sloth and a caller to the show in which comments were made regarding older people and hospitals. The complainant felt that the comments were offensive and perpetuated a negative stereotype of older people.

2. The complaint

Stages 1 and 2

The complainant contacted BBC Audience Services objecting to comments made by Charlie Sloth about a friend Mr Sloth said he had who had worked in a hospital. Mr Sloth said "he smelt like old people ... hospitals always smell like old people ... he smelt about 80". The complainant said that the comment "promulgates negative stereotypes about old people and was made worse as he was speaking to a young person who works in the care centre".

BBC Audience Services replied that Radio 1Xtra "targets a young, 15-24 year old audience" who "appreciate that Charlie's comments in general are said in jest" and that these remarks were not intended to cause offence. In reply to a subsequent contact from the complainant, the Programme Editor said he did not believe that the remarks would have offended the audience as they are aware of Charlie Sloth's style and the remarks were "clearly said in jest".

The complaint was escalated to the Editorial Complaints Unit (ECU). The ECU did not uphold the complaint, saying that the comments did not go beyond generally accepted standards "for a programme of this kind on a radio station such as 1Xtra."

Appeal to the Editorial Standards Committee of the BBC Trust

The complainant asked the BBC Trust's Editorial Standards Committee (ESC) to review the ECU's finding. The complainant did not believe that the justification by the ECU that "Radio 1Xtra listeners expect this kind of humour" was acceptable. He said this argument could be used to excuse negative views about other vulnerable groups. The complainant argued that Charlie Sloth was "reinforcing negative stereotypes of older people". He said it was even more irresponsible that this remark was made to a young woman studying health and social care who could be caring for older people in the future.

3. Applicable Editorial Guidelines

The full guidelines are at <http://www.bbc.co.uk/editorialguidelines>. The section on Harm and Offence (Section 5) 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 decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and a subsequent submission from the complainant.

The Committee noted that this appeal raised issues which required consideration of the Guidelines relating to Harm and Offence. In particular, the Committee considered whether the programme included comments which were offensive and perpetuated a negative stereotype about older people.

The Committee noted the requirement for the BBC to apply generally accepted standards so as to provide adequate protection for members of the public from the inclusion of harmful and offensive material. The Committee further noted that what constitutes "generally accepted standards" is a matter of judgement, taking into account the content, editorial justification and the context in which the content appears. Such context includes, the Committee noted, the likely audience expectation and whether any offence was likely to be caused by the inclusion of the remarks in this programme. The Committee also considered whether the BBC had met the standards required by the Editorial Guidelines regarding portrayal, including whether the comments were editorially justified and avoided careless or offensive stereotypical assumptions.

The Committee noted the preceding content and context in which the remarks were made. The following conversation took place between a caller and Mr Sloth:

Charlie Sloth: So [caller], you're studying health and social, yeah?

Caller: Yeah, it's ridiculous.

Charlie Sloth: And you work at a hospital two days a week.

Caller: Yeah

Charlie Sloth: Do you know when you come home from the hospital, do you smell like the hospital?

Caller: Er no, I hope not!

Charlie Sloth: Because you know what, yeah, I remember, yeah, when one of my friends used to work in a hospital, yeah, and he used to come home and he used to smell like the hospital and everyone used to call him, do you know what everyone used to call him?

Caller: Go on.

Charlie Sloth: C wing. I don't know...

Caller: Why?

Charlie Sloth: He smelled like the C wing of the hospital I guess. He smelled like old people, hospitals always smell like old

people. He was only about 19 at the time. He smelled about 80.

Caller: Oh my gosh...

Shouting heard in the background: Hello Charlie

Charlie Sloth breaks into chanting: Oh yeah, oh yeah..... Innit... proper...

Charlie Sloth: [Caller], good-luck finding a job, darling.

Caller: Thanks

Charlie Sloth: ...Stay out of trouble and remember when you come out of the hospital after working, a little spray (sound effect of a spray). Don't want your friends saying that you smell 80. It's a bit, leave it, yeah?

Caller: Bye

Charlie Sloth: Alright treacle-pie, you have a lovely evening.

Caller: Bye

Charlie Sloth: That was [caller] I hope she don't smell 80.

The Committee noted that on his website, Charlie Sloth is described in the following terms:

"And his combination of inventive writing, quick humour, killer beats and a unique lyrical style quickly began to find an audience ... but the breakthrough moment came when he decided to take the one man band approach to its logical conclusion, recording the ups and downs of the life of an independent British rap artist with his own weekly online show – Being Charlie Sloth. A unique fusion of documentary reportage, guest stars, comedy skits and hidden camera pranks with Charlie playing all the main roles, the show was an instant hit and was picked up by World Star Hip Hop, the US based hip hop video site where it was soon averaging over a million hits a week. Currently one of the stars of BBC 1Xtra, Charlie is the ultimate self-made artist for the new media generation."

The Committee noted that the BBC had carried out audience research into attitudes towards regulation, responsibility and creativity on BBC channels. This is published in the report "Taste, Standards and the BBC: Public attitudes to morality, values and behaviour in UK broadcasting" (June 2009).

The full report is available on line at <http://downloads.bbc.co.uk/guidelines/editorialguidelines/research/taste-standards.pdf>

The Committee noted that in the report, the following attitudes were expressed about radio:

"The network BBC radio stations were well understood by their audiences. Our respondents had comparatively little to say about radio in general but all of them were tolerant of their favourite stations and defensive of any perceived mistakes."

“Radio was regarded as more of a friend than television: audiences found the station with the tone that most appealed to them and stuck with it. The live nature of radio meant that listeners gave it greater leeway: an inappropriate remark or a mistake was readily forgiven as long as there was a swift and sincere apology – there was a greater tolerance for human error, just as there would be with a trusted friend.”

The Committee noted one of the key findings from the audience research carried out on Taste, Standards and the BBC:

“In general people value regulation but do not want more censorship of content: they value the creativity and freedom of speech that may sometimes lead to offending some people and, ultimately, feel that it is more their own responsibility than it is that of the broadcasters to ensure they do not see or hear a programme they find uncomfortable or offensive.”¹⁴

The Committee noted that, when looking at attitudes to radio, the report found that:

“Radio received very little criticism or concern in the area of taste and standards in either of the research approaches. Only 2% were concerned about standards of morality, values and behaviour on the radio, and only 12% felt standards had been slipping in recent years. It emerged in the group discussions that radio listeners have a much more personal relationship with their favourite stations and are therefore more likely to be forgiving of a slip of taste from a familiar presenter.

“Radio is also not seen to have the same impact as television in terms of its visibility and social currency and therefore is less likely to receive negative attention when it is felt to have crossed the line.”

The Committee noted that, although there were no specific comments on output of Radio 1Xtra, there were comments about BBC Radio stations when compared to television channels, and Radio 1 in particular, which may have some bearing on listeners’ attitudes:

“Radio stations, particularly when looking at just BBC Radios 1-5, remain more clearly defined and understood by their listeners:

“Radio 1, amongst the listeners we spoke to, is considered a key station for a broad audience from aged 14-40; and listeners expect a degree of controversy and an occasionally gently mocking tone.

“Fans of Chris Moyles feel his controversial style usually fits their expectations. However, some parents are more concerned on behalf of their children, particularly on the school run.”

The Committee noted that, on the subject of “Offensive Humour”, the key findings of the 2009 research relate mostly to television, but do refer to the lower level of offence found amongst the respondents to radio:

“Concern about the issue of ‘offensive humour’ more generally also emerged in the Ipsos MORI survey, and at a higher level than just in regard to minority groups. Of those who agreed that they had seen or heard something in the past 12 months

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http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/taste_standards_key_findings.pdf

on TV which they had objected to being broadcast, around one third of respondents mentioned 'offensive humour', which was second only to strong language and almost on a par with sexual content (this represents 13% of all respondents). The equivalent figure for radio was 31% of those who had heard something they objected to (representing 4% of all respondents)."

The Committee noted that, when discussing "Talent" in broadcasting, the report found that:

"Audiences have certain expectations of certain talent. This can be both positive, for fans, and negative, for detractors. People who enjoy watching them or listening to them, feel they know what to expect from them and forgive them the occasional joke in poor taste or strong language. Others can enjoy their programmes but sometimes feel pushed away by what is seen as their strong language or offensive comedy."

The Committee noted that the report also looked at attitudes to offence with regard to "Age and Lifestage". Although this specifically mentions television as an example, it can also be applied to radio:

"This research echoed previous findings in this area that age plays a key driver in a person's propensity to be offended in the area of taste and standards. For example, only three in ten 16-34s say they have seen something on TV that they found offensive, compared to over 70% of those aged 65 plus. The age divide is true across most of the measures in our survey, from views on swearing through to how they feel about whether standards on TV are getting better or worse."

The Committee noted that respondents did express, though, sensitivity towards "Offensive Material aimed at Minority Groups":

"Very few spontaneously mentioned this as a key concern in the media (4%), although this increased to 30% who are extremely or very concerned when prompted (and a further 32% who are fairly concerned) so it is not an insignificant issue. When asked to think of specific examples of what material they had objected to being broadcast on TV in the past 12 months material that is offensive to minority groups was mentioned by 16% (or 6% of all respondents, while 14% mentioned religious humour or treatment of religion (around 6% of respondents overall)."

"In the main, the audience in the qualitative research felt that the media has improved in terms of its treatment of minority groups, which echoes the findings of the Literature Review. However, although incidents may be seen to be infrequent, when they do occur they are likely to cause great offence to those being attacked, and great surprise amongst the wider audience."

The Committee noted that Radio 1Xtra has an audience of 1.1 million listeners each week. Of this 1.1 million, 641,000 are from the target audience of 15-24 year olds. This is a 2.7% share of the total available audience for this age group.

The Committee noted that the Charlie Sloth programme reached an average of 295,000 listeners each week over the last six months. Sample sizes were too small to look at a detailed age breakdown for this programme including percentages of audience share. However, 176,000 were aged between 15-24 years.

The Committee took into account that this drivetime show is broadcast on a niche radio station appealing to a young adult audience. It noted that for this programme the age of the target audience is 15-24. It also noted that the nature of a phone-in on this type of show is that it is unrehearsed, and off-the-cuff remarks are made for entertainment purposes. Taking this into account, the Committee did not believe that the comments complained of would have exceeded audience expectations. It concluded that the Guidelines on Harm and Offence were not breached in this regard.

In addition to noting the requirement for the BBC to apply generally accepted standards to protect the public from the inclusion of offensive and harmful material, the Committee also noted that the Editorial Guidelines on Harm and Offence include a section on Portrayal which states:

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

The Committee noted that these Guidelines go on to say that:

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

The Committee noted the complainant's view that the context did not excuse the comments, but in fact made them worse, saying "the programme is listened to by young people whose opinions and values are influenced by role models like Radio 1 presenters". The Committee noted that the complainant felt the issue was "the negative stereotyping of older people at a time when the abuse of vulnerable elderly people is regularly reported in the media".

The Committee further noted the complainant's view that, rather than being far-fetched, this kind of statement about elderly people is almost taken for granted among younger people. The complainant said that in his view the comment was not using comedy to "push the boundaries of what might be regarded as good taste" but, rather, was simply reinforcing negative stereotypes of older people.

The Committee noted the comments made by Mr Sloth relating specifically to old people:

"He smelled like the C wing of the hospital I guess. He smelled like old people, hospitals always smell like old people. He was only 19 at the time. He smelled about 80."

"Don't want your friends saying that you smell 80."

"That was [caller] I hope she don't smell 80."

The Committee did not accept the complainant's link between these comments and the serious issue of the abuse of elderly people. The Committee did not consider that the comments made by Mr Sloth would have had such weight attached to them by listeners to the programme. The Committee considered the complainant's arguments but believed that the audience would have understood the nature of the phone-in and that the remarks were said for comic effect. The Committee agreed that, as with all members of

society, young people have inter-generational contact and would be unlikely to base their views or be influenced in their attitude to the elderly by such offhand comments. The Committee considered that the presenter's comments had clearly been exaggerated for comic effect and that such effect fell within the audience's expectations.

In this case, therefore, although the Committee considered the remarks about elderly people may have been disrespectful, the Committee did not believe that they were meant to be cruel or offensive and did not believe that they exceeded generally accepted standards, taking account of the nature of the content and the context in which it occurred.

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.

Newsnight, BBC Two, 14 November 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold her complaint regarding *Newsnight's* interview with Israel's Deputy Foreign Minister, Danny Ayalon.

The complainant said that the *Newsnight* presenter ought to have challenged the statement made by Israel's Deputy Foreign Minister that:

“...we gave Gaza entirely to the Palestinians. We left Gaza altogether in 2005, seven years ago...”

She said the statement was “made as fact, and not as opinion”. She said the statement was “not only controversial, it is wrong”. The complainant considered that viewers should have been told Israel had not given Gaza entirely to the Palestinians and was considered an occupying power in the Gaza by the UN:

“It is a simple fact that Israel has complete control over Gaza's airspace, its land and sea borders, the movement of people and goods and its telecommunications network.”

The complainant said Mr Ayalon's “false claims” were allowed to stand and he was allowed to continue talking for roughly another 30 seconds, at the end of which the presenter invited him to apologise for the “needless deaths” of civilians.

The Trust Unit's decision

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

The Trust's Adviser agreed with the ECU that the sections of the Editorial Guidelines relating to Impartiality and Accuracy were relevant to the issues raised. She noted that the over-arching requirement was for due accuracy and due impartiality.

The Trust's Adviser noted that, in his response of 1 March 2013, the Complaints Director had addressed the complaint that Mr Ayalon's statement had gone unchallenged as

follows:

“You have said, for instance, that Mr Ayalon was not challenged on the claim that Israel had left Gaza seven years ago. However as I have explained, he was challenged on other points – in particular, the interviewer responded to his claim regarding Gaza by asking him whether he would apologise to the civilians who had been needlessly killed in the Israel actions. I am sure you can see the practical difficulties associated with challenging an interviewee on every contentious point that is made. In this case it seemed to me that the effect of the interjection was to bring Mr Ayalon back to the question of the human cost of the actions he was defending. This may not have been the point you would prefer had been highlighted but I cannot see this as evidence of bias. In any case I have explained above why I think viewers would be aware that the statement of an Israeli spokesperson would reflect the position of the Israeli state, and would therefore be unlikely to be materially misled by the absence of a challenge on this point.”

The Trust’s Adviser considered that the issues raised in the appeal potentially engaged the Guidelines on Accuracy (section 3) and Impartiality (section 4) including those relating to “controversial subjects” and the conduct of interviews.

The Trust’s Adviser noted the requirements for due accuracy and due impartiality mean that the accuracy and impartiality must be adequate and appropriate to the output, taking account of the subject matter and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

Looking at the specific statement “...we gave Gaza entirely to the Palestinians. We left Gaza altogether in 2005, seven years ago”, the Trust’s Adviser acknowledged that Gaza was regarded as an occupied territory by the UN and the UK, that there continue to be considerable restrictions on the movement in and out of Gaza for people and goods, and that Israel continues to control Gaza’s air and sea spaces. However, the Trust’s Adviser also considered it was a fact that Israel withdrew from Gaza in 2005 in terms of withdrawing its military presence on the ground, and evacuating Israeli settlements.

The Trust’s Adviser noted that the output in question was a live interview held on the *Newsnight* programme with Israel’s Deputy Foreign Minister, Mr Ayalon. The Trust’s Adviser noted the specific context in which Mr Ayalon’s remarks were made:

Gavin Esler: Right but of course you have in the past killed Hamas founder Sheikh Ahmed Yassin, his successor Abdel Aziz Rantissi, you’ve killed previous military commanders including Salah Shahade. And while you have successfully removed one enemy of Israel today, you have probably created a whole lot of other ones. There will be a successor to this man?

Danny Ayalon: Well, I would beg to differ. When we did what we had to do in killing these heads of terror we did achieve these deterrents. What happened in between is that we gave Gaza entirely to the Palestinians. So we left Gaza altogether in 2005, seven years ago. And since then, instead of having a responsible part, taking responsibility and managing the lives in Gaza and negotiating with us on peace and reconciliations, we saw, actually, that Hamas was emboldened, getting more and more arsenal of terror and

more accurate long range missiles, and terrorising more than one million innocent Israeli civilians in the population on our southern border in southern parts of Israel. What we see now.

GE: Picking up on the point of civilians, there were civilians killed on the other side today, would you like to apologise for those needless deaths?

The Trust's Adviser noted that Mr Ayalon's statement: "...we gave Gaza entirely to the Palestinians. We left Gaza altogether in 2005, seven years ago" was given by Mr Ayalon as part of his response to a question asked by the presenter about whether by killing "one enemy of Israel", Israel had created "a whole lot of other ones". The Trust's Adviser noted that Mr Ayalon had not been asked about the legal status of Gaza or about whether or not Israel occupied Gaza. The Trust's Adviser also noted what Mr Ayalon had said following the statement complained of. He said:

"And since then, instead of having a responsible part, taking responsibility and managing the lives in Gaza and negotiating with us on peace and reconciliations, we saw, actually, that Hamas was emboldened, getting more and more arsenal of terror and more accurate long range missiles, and terrorising more than one million innocent Israeli civilians in the population on our southern border in southern parts of Israel. What we see now."

The Trust's Adviser considered that the audience would be likely to consider from this that Mr Ayalon's point was that the withdrawal of Israel's military presence in Gaza emboldened Hamas and enabled them to launch attacks into Israel. In reply, the presenter picked up on Mr Ayalon's comments about the impact of these attacks on innocent Israeli citizens. He said: "there were civilians killed on the other side today, would you like to apologise for those needless deaths?" The Trust's Adviser did not consider that the interview as a whole or Mr Ayalon's response was about the legal status of Gaza or whether or not it was occupied by Israel.

The Trust's Adviser considered that if Mr Ayalon's statement had been made in the context of a discussion or interview about the legal status of Gaza or whether or not Gaza was occupied by Israel, it might have been necessary for the presenter to probe further in order to achieve due accuracy and due impartiality. However, as explained above, this was not the case here.

The Trust's Adviser further considered that the fact that the statement was made by Israel's Deputy Foreign Minister was relevant to the questions of whether or not due accuracy and due impartiality had been achieved. The Trust's Adviser considered that the *Newsnight* audience would be likely to expect the Israeli Deputy Foreign Minister to say that Israel gave Gaza entirely to the Palestinians and that Israel left Gaza altogether in 2005 as they would likely understand that to be the Israeli position. She further considered that the *Newsnight* audience would be able to decide for themselves what weight to give to his comments.

The Trust's Adviser also noted that there are particular requirements relating to Impartiality when content deals with "controversial subjects". She considered that the statement "we gave Gaza entirely to the Palestinians. So we left Gaza altogether in 2005, seven years ago" related to the legal status of Gaza which, taking account of the factors in 4.4.6 of the Editorial Guidelines, was a controversial subject. However, the Trust's Adviser considered that the legal status of Gaza was not the subject of the interview or

even Mr Ayalon's response when taken as a whole. She noted, too, the requirement for "due impartiality" meant that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

In terms of the Guideline requirement for interviewees expressing contentious views to be "rigorously tested", the Trust's Adviser noted that the Editorial Guidelines did not require that interviewees were challenged on each point they made, but that it was a matter of editorial judgement which points should be picked up by the interviewer. She agreed with the view of the Complaints Director, referred to above, that the effect of asking Mr Ayalon about needless civilian deaths had returned the interview to the human cost of Israel's action.

She considered that, on the day that Israel had killed a leading member of Hamas and launched an air and ground offensive into Gaza, the follow-up question which invited Mr Ayalon to apologise for "needless civilian deaths" was editorially justified and a reasonable way of testing the interviewee in line with the Guideline requirements. She noted that the complainant would rather Mr Ayalon had been tested further on the extent to which Israel continued to hold power over Gaza; however, she considered it was a matter of editorial freedom for the programme to choose which areas to question the interviewee over, and that returning to the human suffering in Gaza was likely to be in line with the audience expectations. In addition, the Trust's Adviser also noted that there were practical difficulties associated with challenging an interviewee on every contentious point that is made.

The Trust's Adviser therefore considered the Trustees would be likely to conclude that the report had been both duly accurate and duly impartial and that the appeal did not have a realistic prospect of success and should not, therefore, be put before the Committee.

Request for review by Trustees

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

"...we gave Gaza entirely to the Palestinians. We left Gaza altogether in 2005, seven years ago"

was not only controversial, it was wrong, and should have been challenged by the *Newsnight* presenter.

The complainant said that no information was given at any point during the programme to let viewers know that Israel had not given Gaza "entirely to the Palestinians" and, being considered an occupying power in Gaza by the UN, had not "left Gaza altogether". She said it was "a simple fact that Israel has complete control over Gaza's airspace, its land and sea borders, the movement of people and goods and its telecommunications network".

The complainant believed that it was irrelevant for the Trust's Adviser to say that the interview was not about the legal status of Gaza. She said that "it does not matter what the interview was about. What matters is what was said during it". She agreed that there wasn't a need to "challenge every interviewee on every contentious point that is made", but said there was a need "simply to point out the blatant lies. This would be in line with audience expectations".

The complainant quoted from the Accuracy Guidelines, saying that “by allowing Mr Ayalon’s false statement to stand, the BBC allowed content to be broadcast that was not “well sourced, based on sound evidence [or] thoroughly tested” (3.2.2). It also allowed an interviewee to “distort known fact [and] present invented material as fact” (3.2.3).

The Committee’s decision

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

The Committee noted the complainant’s concern that the statement made by Israel’s Deputy Foreign Minister that “we gave Gaza entirely to the Palestinians” was not challenged by the *Newsnight* presenter. The Committee also noted that while the complainant had accepted that there was no need to “challenge every interviewee on every contentious point that is made”, she believed that the audience would expect “blatant lies” to be pointed out, and she considered that Mr Ayalon’s statement was a “blatant lie”.

The Committee considered whether there was a reasonable prospect of it finding that the Editorial Guidelines on accuracy and impartiality had been breached.

The Committee noted the Guidelines required the BBC to do all it can to ensure “due accuracy” in all its output.

The Committee considered the specific context in which Mr Ayalon’s remarks were made during the live interview. The Committee agreed with the Trust’s Adviser that the focus of the interview was the human cost of Israel’s action and noted that the interview took place on the day that Israel had killed a leading member of Hamas and launched an air and ground offensive in Gaza. The Committee considered that the challenge by the presenter who asked Mr Ayalon directly if he would like to apologise for the “needless deaths” of “civilians killed on the other side today” was appropriate and in line with Guideline requirements.

The Committee noted that the complainant thought that it was irrelevant that the subject of the interview was not the legal status of Gaza. The Committee did not agree and considered that the subject of the interview was a relevant factor in judging whether due accuracy had been achieved. It further noted that the Guidelines explicitly require the BBC to take account of the subject of the content and the likely audience expectation. The Committee agreed that, had the interview been about the legal status of Gaza, in the interests of due accuracy it might have been necessary for the presenter to probe further into Mr Ayalon’s statement. However, in the context of this particular interview, while noting the complainant’s strength of feeling that a “blatant lie” had gone unchallenged and having considered the Guidelines quoted by the complainant, the Committee agreed that there was no reasonable prospect of it finding that there had been a breach of the Accuracy Guidelines in this respect.

The Committee further agreed with the Trust’s Adviser that the fact that the statement “we gave Gaza entirely to the Palestinians” was made by the Israeli Deputy Foreign Minister was relevant. It considered the *Newsnight* audience would be likely to expect and understand this to be the Israeli position and would be able to decide for themselves what weight to give to Mr Ayalon’s comment.

The Committee further considered that there was no reasonable prospect of it finding that the fact that Mr Ayalon was not challenged on this particular point was a breach of the Editorial Guidelines on Impartiality. As with Accuracy, the Committee considered that the subject and nature of the content, and the likely *Newsnight* audience expectation, were relevant to the question of whether due impartiality had been achieved. The Committee agreed with the BBC Complaints Director who concluded in his Stage 2 response:

“This may not have been the point you would prefer had been highlighted but I cannot see this as evidence of bias. In any case I have explained above why I think viewers would be aware that the statement of an Israeli spokesperson would reflect the position of the Israeli state, and would therefore be unlikely to be materially misled by the absence of a challenge on this point.”

Noting the subject and nature of the content, the likely audience expectation, and having regard to the sections of the Editorial Guidelines on Impartiality and Accuracy, the Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of those Guidelines.

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

Today, BBC Radio 4, 11 June 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint regarding an interview with Communities Secretary Eric Pickles on the *Today* programme. The interview was about a Government scheme to tackle the problems of 120,000 "troubled families".

The complainant considered the number of "troubled families" was open to question, but had repeatedly been presented as factual and had not been challenged. He said that the *Today* interviewer, Justin Webb, had not established the evidence for Mr Pickles' claims about the number and character of the families. The complainant contrasted the *Today* interview with a report on the same subject on the Radio 4 programme, *More or Less*, which he considered "totally debunked" the Government's presentation of the statistic and considered that other elements of BBC output, including *Today* and *Question Time*, should have challenged it in the same way. The report on *More or Less* considered the number of families who were "troubled" and sought to assess how that was defined – whether they were troubled in terms of being disadvantaged, or trouble-making.

The complainant stated:

"If this had been done in the Pickles interview it would have been clear that there was no evidence for there being 120,000 trouble making families. Establishing the evidence for a claim doesn't require 'going into depth', and if spending more than 1 minute on a topic is required to avoid misleading listeners and viewers then it should be done.

"The BBC did such a poor job of presenting the story concerning the 120,000 that two days later everyone who spoke on QT thought they were trouble making and not troubled families."

The Trust Unit's decision

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

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

She noted that BBC Radio 4's *More or Less* broadcast on 18 May 2012 had examined the figure of 120,000 families. Professor Ruth Levitas of Bristol University had explained in an interview that the figures came from a secondary study of the 2004 Families and Children Study published by the Department of Work & Pensions. She stated that families were assessed against seven criteria that indicated they were disadvantaged. They were deemed to be "troubled" if at least five of the seven criteria applied to them. These criteria included whether parents suffered from addictions, whether children had a history

of truancy, whether they lived in overcrowded accommodation and whether they had significantly low incomes. The study found that 2% of the families met the criteria to be described as “troubled”. The programme also established that because of the margin of statistical error, the number of families potentially affected could be more than 300,000. Professor Levitas said: “The whole discourse that is being created around this is making a slippage from families that undoubtedly have troubles to being trouble makers.”

The Trust’s Adviser noted that in the edition of the *Today* programme in question, the presenter, Justin Webb, started by asking Mr Pickles if the Government knew who the people and families concerned were – did they have names and addresses, for example? The Trust’s Adviser then noted the exchange which followed:

- Justin Webb (JW): You’ve already said that there are 120,000 of them – what if there are many more? I mean, basically what I am suggesting to you is that this figure, possibly it could be fewer, it could be many, many more.
- Eric Pickles (EP): It’s true it could be 19,000, it could be 21,000...
- JW: It could be 360,000!
- EP: Well I think that’s extremely unlikely...
- JW: But you don’t know.

Mr Pickles stated that this was a “petty point” and “a silly, academic” question. Mr Webb replied:

- JW: It’s not silly, or petty, or academic, because there is a sum of money attached to this, isn’t there, and that sum of money is divided up between these families, is either a realistic sum that genuinely can help people, or an unrealistic sum ... if the number is not 120,000 then plainly the sum of money might not be enough.

Mr Pickles claimed that these families were costing “the best part of £9 billion a year”. Mr Webb replied:

- JW: Where do you get the £9 billion from? Because you don’t know that it’s 120,000 families.

Mr Webb went on to challenge Mr Pickles on how the figures were being used – were these families troubled or trouble-makers?

- JW: The point I suppose is this – is how you define these families. And this goes to the heart of the issue – whether it is people who are simply living in poverty, and who come up to a number of government criteria when it comes to poverty, or whether they are actually in trouble and causing trouble. Which of those is it?

The remainder of the interview dealt with what the presenter called questions of “justice”; whether, if these were trouble-makers, the Government should be spending public money on them rather than troubled families who were not involved in, for instance, criminal

activities or anti-social behaviour.

The Trust's Adviser noted the response of the Complaints Director at Stage 2, which stated that the interview "made the uncertainty over the figures very clear, and raised significant concerns about their accuracy", The Trust's Adviser agreed with that analysis. She noted too that, while the presenter did not refer specifically to the *More or Less* programme, the *Today* presenter suggested the number of families affected could be 360,000 – which reflected the margin of error referred to in the *More or Less* report. The Trust's Adviser considered that Trustees would be likely to conclude that Mr Pickles had been robustly challenged about the number of families he was referring to and had also been challenged about whether the policy was intended to target troubled families or trouble-making families.

The Trust's Adviser said that, for completeness, she had also watched the edition of *Question Time* cited by the complainant. A member of the audience asked whether the panel agreed with Eric Pickles that "problem families have had it easy for too long?" She noted that Tim Farron MP expressed reluctance to stigmatise those in poverty. Journalist Peter Hitchens considered compassion for those in poverty should not be linked with spending money on them, and he stated that the overriding problem was single-parent families with an absent father. Emily Thornberry MP responded to Mr Hitchens' comments about single-parent families, based on her own personal experience. Former BBC Director-General Greg Dyke advocated an approach that moved away from party politics to studying and solving the problem. Grant Shapps MP cited the figure of 120,000 families who were "in deep trouble, creating problems that if you happen to live in that community are responsible for causing 80% of the problems around you in that community". Ms Thornberry challenged Mr Shapps at this point: "Your statistics are dodgy aren't they? You've got problems with your statistics. I don't really understand where it comes from and the Government has been asked."

The Trust's Adviser noted that the question raised by the member of the audience in *Question Time* took a different and broader approach to that taken by *Today* and that the resulting discussion could be summarised as the "deserving versus the undeserving poor".

The Trust's Adviser could see no evidence of a link between *Question Time* and *Today's* coverage of the story. She noted the story had received wide coverage in the media. The Trust's Adviser could see no evidence to support the complainant's allegation that "everyone who spoke on QT thought they were trouble making and not troubled families" and she noted that when the figure of 120,000 families was raised by Mr Shapps, Ms Thornberry was quick to challenge what she called "dodgy statistics".

Whilst the Trust's Adviser noted the frustration expressed by the complainant about the Government's use of these statistics, she concluded that the BBC had interrogated the figures and challenged the Communities Secretary and that in her view the ESC would consider the item was duly accurate. She therefore concluded that 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. He said that he had mentioned the *Today* programme as an example, but it was not the substance of his complaint. On the day of the *Today* interview with Mr Pickles, the complainant said that the Government's claim that there were "120,000 trouble making families" was a leading news story on the radio and TV news programmes which he watched throughout the day. He said that this had convinced people that it was true that

there were “120,000 trouble making families”.

By contrast, the complainant said that “the previous week on *More or Less* it was made clear that this claim was not true”. He said it was a poor estimate and it was not an estimate of the number of “trouble making” families, but an estimate of the “number of families suffering substantial deprivation”.

The complainant referred to the comment made by one of the *Question Time* panellists that “these people are skum”. The complainant said this was a reference to what the complainant described as “those people in families suffering poverty and mental illness and other torments”.

The Committee’s decision

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

The Committee noted the complainant’s concern about the way in which the Government’s claim that there were “120,000 trouble-making families” had been presented on BBC News on the day of the *Today* interview with Mr Pickles, and the complainant’s belief that this had convinced people that it was true when it was not.

The Committee also noted the complainant’s comparison with Radio 4’s *More or Less* which he said had made it clear that this claim was untrue.

Noting the complainant’s statement that 120,000 was a “poor estimate and it was not an estimate of trouble making families”, but an estimate of the “number of families suffering substantial deprivation”, the Committee observed that the term “trouble making families” had not been used by the BBC when reporting the figures. Instead, the term “troubled families” was used. The *Today* presenter had challenged Mr Pickles during the *Today* interview on how the figures were being used and asked him: “Were those families troubled or trouble-makers?” The distinction between “troubled” and “trouble-making” was then discussed in the interview.

The Committee noted that the complainant had stated in his request for a review of his appeal that he was not just talking about the *Today* programme, but the Committee also noted that the comparison between the *Today* programme and *More or Less* had been the focus of the substantive complaint originally made and therefore it was appropriate for the complaint responses to concentrate on these programmes.

With regard to the *Today* programme, the Committee noted some of the questions put to Mr Pickles by the interviewer:

Justin Webb (JW): You’ve already said that there are 120,000 of them – what if there are many more? I mean, basically what I am suggesting to you is that this figure, possibly it could be fewer, it could be many, many more.

...

JW: It’s not silly, or petty, or academic, because there is a sum of money attached to this, isn’t there, and that sum of money is divided up between these families, is either a

realistic sum that genuinely can help people, or an unrealistic sum...if the number is not 120,000 then plainly the sum of money might not be enough.

...

JW: (in response to Mr Pickles' statement that these families were costing "the best part of £9 billion a year") Where do you get the £9 billion from? Because you don't know that it's 120,000 families.

...

JW: The point I suppose is this – is how you define these families. And this goes to the heart of the issue – whether it is people who are simply living in poverty, and who come up to a number of government criteria when it comes to poverty, or whether they are actually in trouble and causing trouble. Which of those is it?

The Committee agreed that the interview made the uncertainty over the figures very clear, and raised significant concerns about their accuracy. The Committee considered that it would be likely to conclude that Mr Pickles had been robustly challenged about the number of families he was referring to and had also been challenged about whether the policy was intended to target troubled families or trouble-making families.

The Committee noted that in his appeal to the Trust the complainant had said that "The BBC did such a poor job of presenting the story concerning the 120,000 that two days later everyone who spoke on QT thought they were trouble making and not troubled families." The Committee noted that issue had been raised by a member of the audience who had asked the panel whether it agreed with Eric Pickles that "problem families have had it easy for too long". The Committee agreed with the analysis by the Trust's Adviser that the question took a different approach to the discussion on the *Today* programme and that the resulting discussion could be summarised as being about the deserving versus the undeserving poor. The Committee agreed that there was no evident link between the tone of the *Question Time* discussion and *Today's* coverage of the story. While noting the complainant's feelings about one panellist's comments that "these people are scum", the Committee considered that it was very clear that this was a view of a contributor expressed during a programme well known to its likely audience for robust debate and controversial personal views from all points on the political spectrum.

The Committee agreed, having regard to the Editorial Guidelines on Accuracy, that there was no reasonable prospect of it finding there had been a breach of those guidelines.

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

Bargain Hunt, BBC One, 9 January 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 BBC's response to his complaint regarding an exchange on *Bargain Hunt* in which one of the contestants commented on being a member of the Socialist Workers Party.

The complainant considered the BBC had shown bias in referring to the Socialist Workers Party on *Bargain Hunt* and considered that, if the contestant had been a member of either the BNP or the National Front, that would not have been broadcast. The complainant felt that to preserve the BBC's commitment to impartiality there should have been no mention of a contestant's political sympathies.

The Trust Unit's decision

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

The Trust's Adviser considered the appeal in relation to the Guidelines on Impartiality.

She noted the exchange was part of a brief introductory sequence in which the contestant's political affiliation was raised as one of her personal interests and the exchange was light-hearted:

Presenter: It says here you have quite strong political views – so are you going to give us the SDP [*sic*] view...

Contestant: Oh shush! When I went to university I just got very political and I've always been quite like that, my parents have always been quite political, so I joined the Socialist Workers' Party and just started from there...

Presenter: You got the 'Angry Brigade' hat...

Contestant: [laughs] Angry!

Contestant's father: She is!

The Trust's Adviser noted the complainant had received a response from the programme team via the Director-General of the BBC which had included the following comment from the Executive Producer of the programme:

"The Bargain Hunt team are well aware of the requirements of the BBC's Editorial Guidelines, including the requirement for due impartiality. I agree that the series is not the place for political discourse and there is none to be found in this episode.

"In the opening minutes of each episode we try to learn a little bit more about the contestants' background and interests. In this case, the contestant has a very active interest in politics, which she clearly considers an important aspect of her upbringing and character. There is no discussion of, and no judgement passed on, the activities of the Socialist Workers Party – simply a bit of gentle ribbing from Tim Wonnacott which acts as neither endorsement nor criticism.

"Additionally, there is perhaps an interesting point of juxtaposition in a student with anti-establishment views appearing alongside her father, who is a Church of England minister. I consider it reasonable to include the references to the contestant's politics in that context but, of course, any such decisions must be taken on a case-by-case basis as and when necessary – not hypothetically."

The Trust's Adviser noted the Director-General had also referred the complainant to the Editorial Guidelines and had stated:

"...there is no rule against mentioning the political affiliations of programme participants whatever they may be, and we feel that this is therefore a matter of editorial discretion for the programme-makers rather than a matter of editorial standards."

The Trust's Adviser considered that the BBC could never be complacent about achieving impartiality and appreciated the strength of the complainant's feelings on the matter. However, she considered Trustees would be likely to conclude that the BBC had given a reasonable response as to why the sequence had been included and there was no requirement for the comment to have been edited out of the programme in the interests of impartiality.

As she considered it likely Trustees would believe the complainant had received a reasonable response, she did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

The Trust's Adviser noted that the complainant had asked whether a contributor would have been able to refer to the BNP or the National Front in the same way. She noted this was a theoretical question and the programme-makers were entitled to respond to queries about the programme that had been broadcast, rather than what might be broadcast. However, she noted the response from the Director-General made clear that "there is no rule against mentioning the political affiliations of programme participants whatever they may be".

The Trust's Adviser noted the complainant remained unhappy with the tone of the response he had received from the Director-General and considered it "a pompous self-righteous reply". However, the Trust's Adviser considered the response was a reasoned and helpful answer to the complaint that had been made. She did not consider Trustees would conclude the complaint had been poorly handled and therefore did not propose to put this aspect of the appeal before Trustees as she considered that it too did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He did not feel that his main complaint had been addressed.

He said that his complaint was that "references of extreme left political views (or right) should not have been put to contestants in a day time light entertainment programme such as *Bargain Hunt*. Also, as it held a reference of the extreme left and not the extreme right, that the BBC in its bias thought it okay".

He was also unhappy that his complaint had been "allowed to escalate whereas a simple early e-mail to [the complainant] saying that in hindsight it probably was not a good idea

to touch on such views in such a programme would have ended the matter”.

The complainant believed his complaint “had been looked upon as ‘contemptible’ by the BBC elite as it does not fit into the political views of their liberal/left leanings”.

The Committee’s decision

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

The Committee noted the complainant’s concern that references to contestants’ political views were not appropriate in *Bargain Hunt*, and also noted his view that a reference to left wing political views without a reference to right wing views was indicative of bias.

Having regard to the Editorial Guidelines on Impartiality, the Committee did not consider that there was a reasonable prospect of it finding that the reference in question was in breach of those Guidelines. The Committee noted the context of the reference which was made during a brief introductory sequence presenting some background information about the participant. Her political affiliation was mentioned as one of her personal interests. The Committee noted the complainant’s strength of feeling about the political reference but also noted that there was nothing in the Guidelines stating that the political views of programme contributors could not be mentioned.

The Committee considered the BBC had given a reasonable response as to why the sequence had been included and why there was no requirement for the comment to have been edited out of the programme in the interests of impartiality.

The Committee noted that the complainant was dissatisfied with the Director-General’s response. However, the Committee noted that the Director-General had responded twice to the complaint, giving an explanation for the editorial reasons for including the reference to the contestant’s political affiliations. The Committee agreed that this was a matter of editorial discretion for the programme-makers rather than a matter of editorial standards, and that the responses given to the complainant had been appropriate and proportionate to the substance of the complaint. The Committee did not agree that there was anything in the tone of the responses from the Director-General to support the complainant’s view that the complaint had been looked upon as “contemptible”.

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

***Today*, BBC Radio 4, 27 November 2012**

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision of the Head of Editorial Compliance and Accountability, BBC News, not to uphold his complaint regarding the BBC's reporting in relation to the issue of climate change.

In particular, he referred to an interview on the *Today* programme in which an interviewee from the insurance industry was asked whether people affected by a flood were "victims of climate change or just unlucky". He considered that there was "constant questioning of whether we are seeing different weather as a result of climate change" and he considered that this could "serve no purpose other than undermining the whole idea of climate change".

The complainant said he was unhappy at the response that he had been sent at Stage 1 from an Output Editor of *Today*, which he considered supported his view that the BBC undermined action on climate change. He considered the initial response from the Output Editor indicated bias and, when he raised that, believed the BBC had tried to backtrack.

At Stage 2, the complainant considered that the Head of Editorial Compliance and Accountability, BBC News, had "refused to handle his complaint in an honest fashion" and had not explained the behaviour of the *Today* programme Editor. He complained that the questions that he had asked were not answered.

The complainant stated that the question he wished the Trust to answer was why the BBC, in the form of the *Today* programme, could cover an issue in a biased manner and then refuse to answer complaints about the bias being displayed.

The Trust Unit's decision

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

Alleged bias in BBC Output

The Trust's Adviser dealt firstly with the complaint about the content of the *Today* programme. She noted that all BBC output was expected to meet the values and standards set out in the Editorial Guidelines. She noted the Guidelines relating to Impartiality (Section 4).

The Trust's Adviser noted that the material complained about was an interview with a chief executive from the insurance industry in the business section of *Today*. Although brief, the interview covered a number of subjects. The interview began by referring to a number of developing countries which were considered to be underinsured against extreme weather. Then the interview moved to consider whether the bill for extreme events should be met through insurance schemes or through a government response (in

which case, money raised through taxes would be used to cover the cost of extreme weather). The interview then considered the availability of flood insurance in Britain to cover high risk homes and the deadlock that had been reached in the talks between insurers and the government. The interview turned to the extent to which the Government had a responsibility to increase flood defences. It was after this exchange that the interviewer asked his final question:

"I just wonder, these 'one in a hundred year', 'one in fifty year' floods seem to be happening every couple of years at the moment. Is this just bad weather, bad luck or is this climate change we're looking at...?"

To which the interviewee responded:

"It does seem to look like a bit of bad luck doesn't it, they do happen with some frequency, I'm not a meteorologist but we had bad floods in 2007 and only five years later on we're having bad floods yet again so the frequency and severity does seem to be increasing."

The Trust's Adviser noted the Editorial Guidelines made clear that the BBC could produce output about any subject, at any point on the spectrum of debate, as long as there was editorial justification for it. She considered that, in an item about extreme weather and the costs associated with it, Trustees would be likely to conclude there was a strong editorial justification in asking a key figure from the insurance industry whether he considered it likely that more extreme weather events would be experienced – given that this was a critical area for the insurance industry.

The complainant considered that the interviewee seemed to him to have been made "uncomfortable" by the question. However, the Trust's Adviser did not agree with the complainant's analysis. She considered the interviewee gave a perfectly reasonable, if inconclusive, response to the question posed. She did not consider that the audience generally would have drawn the conclusion, from the manner in which the response was given, that the interviewee was casting doubt on climate change.

The Trust's Adviser also did not consider she had seen evidence that, in asking this question, *Today* had been "undermining the whole idea of climate change" as the complainant had initially suggested. Nor did she consider that she had seen any evidence that putting the question to the interviewee showed a "malicious desire to obfuscate" as suggested by the complainant.

Therefore, in terms of the underlying substance of the appeal, the Trust's Adviser did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Complaint Handling

Turning to the complainant's main contention in his appeal to the Trust, that the BBC's complaints handling was at fault in this case, the Trust's Adviser carefully considered the correspondence that had passed between the complainant and the BBC. While she noted the strength of the complainant's feelings, she considered there was no reasonable prospect of success for this element of the complaint.

Having initially complained on 2 December 2012, the Trust's Adviser noted the complainant had been sent a response at Stage 1 on 8 December 2012, which stated:

"It may be helpful to explain the context underpinning the application of our editorial guidelines in regard of climate change. The biggest peer-reviewed process in history, the IPCC, concluded with certainty of more than 90% that climate change was primarily driven by humans. This has informed our coverage."

The same response included a comment from one of the output editors of *Today*, who said:

"The question of the relationship between short term weather changes and longer term climate change is hotly debated within the scientific community. It is a debate we need to reflect on the programme..."

"We don't see how [asking the question quoted above] can undermine the whole idea of 'climate change', which the BBC broadly accepts as the scientific consensus."

The Trust's Adviser noted that the complainant had not been satisfied with the response and, in particular, he took issue with the comment that the relationship between short term weather changes and longer term climate change was "hotly debated" as he considered this was evidence of a bias against climate change. The complainant supplied a comment from the Met Office which stated:

"Our climate change predictions support the emerging trend in observations and show a clear intensification of extreme rainfall events in a warmer world."

The complainant was sent a further Stage 1 response of 30 January 2013, which stated:

"We forwarded your further complaint to [the Output Editor] who replied that there's little he can usefully add except to point out that clearly there is no consensus on whether a particular storm or flood is the result of climate change and this was what he meant when he said the link was 'hotly debated'."

"I wouldn't accept that the interview questioned the accepted science nor did it breach our editorial guidelines."

"...the question of the relationship between short term weather changes and longer term climate change is hotly debated within the scientific community."

The complainant considered that this was an attempt to "backtrack" and was "a desperate attempt to wriggle out of a tight corner". He said that he had never suggested that it was possible to ascribe a particular weather event to climate change.

The Trust's Adviser noted that, at Stage 2, the point was addressed by the Head of Editorial Compliance and Accountability, BBC News, who wrote on 6 March 2013:

"the question was hardly framed in a way to cast doubt on scientific consensus."

"there's little or no agreement that any specific extreme event can be attributed to climate change – the vast majority of scientists accept that weather events are caused by a huge number of variables and it isn't realistic to say, for example, that a flood in location X has been caused by melting Arctic sea ice. That said, although this particular interview did not challenge the consensus view, you seem to suggest that the Today programme should not even pose the question of whether specific extreme weather events are linked to climate change. Not to do so as a

matter of principle would be to disregard the need to pose the questions that may be in the minds of listeners and the BBC's approach has been set out to you in previous responses. The Today Programme has explored the impact of climate change on numerous occasions and it is far from the case that it is 'trying to deflect attention', as you suggest."

The Trust's Adviser agreed that the question of whether a specific extreme weather event was related to climate change was likely to be in the minds of some listeners and it was entirely in accordance with the BBC's remit to provide an opportunity for them to judge the response.

The Trust's Adviser did not consider that there were reasonable grounds to argue that the statement from the Met Office and those of the Today Editor were contradictory, or that the Editor's response was an attempt to backtrack.

The Trust's Adviser considered that the Met Office predictions relating to climate change were supported by the "trend" in observations of heavy rainfall. The Output Editor had not disputed this, rather he was explaining that in the light of these predictions, it was wholly legitimate to pose the question with regard to any specific weather occurrences whether these were indeed attributable to climate change. The Trust's Adviser considered the Output Editor's second comment was an attempt to clarify his position.

The Trust's Adviser considered Trustees would be likely to conclude that at Stage 1 and Stage 2, the BBC had endeavoured to send helpful and full responses to the complainant and she did not therefore consider this element of the appeal had a reasonable prospect of success.

The Trust's Adviser noted that in correspondence at Stage 2 the complainant raised further complaints about other BBC output. These were not considered in this appeal because any fresh complaints would have needed to have been raised in the first instance at Stage 1 in accordance with the BBC Complaints Process. The Trust's Adviser noted that if the complainant had concerns about future output, he would need to raise those at Stage 1 within thirty working days of the broadcast.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He felt that his complaint had not been properly addressed at any point during the complaints process.

The complainant made the following points in response to the decision by the Trust's Adviser not to proceed further with his appeal:

- At Stage 2, the Editor of the *Today* programme "revealed his bias" and used the same tactic as everyone else who has dealt with this complaint by "trying to make two very different conjectures appear as one:

Conjecture 1 – the increased number of extreme weather events in recent times is a result of global warming.

Conjecture 2 – particular weather events can be linked to global warming."

The complainant said that the Editor of *Today* had claimed that conjecture 1 is "hotly contested" but when the complainant told him there was a scientific consensus on

that, the Assistant Editor had “tried to pretend that he actually meant conjecture 2 is not a given”. The complainant said that conjecture 2 was “a nonsense” and he had never heard anyone claim it to be true. The complainant alleged that everyone else who had dealt with his complaint supported this “changing of tune” up to a very senior level and there had not been a proper investigation of the way in which the Editor had responded to his complaint.

- The complainant considered that it was inconsistent for the BBC to refer to the range of programming while not accepting the complainant’s arguments with regard to a pattern across a range of programming. The complainant stated his view that any investigation of the *Today* programme’s coverage of climate change would illustrate how the issue is generally avoided and “on the few occasions it does get mentioned it is done in a carping, sniping fashion because it is obvious the presenters/editors don’t want listeners to be concerned about climate change or wonder what should be done about it”.
- The complainant considered that his original complaint has been “cast aside” during the course of the complaints process at Stages 1 and 2. He said that in his initial complaint he described the interviewee as being uncomfortable with the question but the Adviser had disagreed. He queried whether the interviewee’s answer: “It does seem to look like a bit of bad luck doesn’t it, they do happen with some frequency, I’m not a meteorologist but we had bad floods in 2007 and only five years later on we’re having bad floods yet again so the frequency and severity does seem to be increasing” – was really a confident response. The complainant said that “the lack of confidence at this point was in complete contrast with the rest of the interview which to me clearly demonstrates some discomfiture”. The complainant surmised that “the Adviser was indulging in wishful thinking rather than being objective”. He said that this supposition was given “even greater weight by the later claim by the Adviser” that “the interviewee gave a perfectly reasonable, if inconclusive, response to the question posed”. The complainant asked what the benefit was to the audience, “unless the idea is to undermine climate change concern?”
- The complainant said that the Trust’s Adviser claimed in her decision that she “did not consider that the audience generally would have drawn the conclusion, from the manner in which the response was given, that the interviewee was casting doubt on climate change”.

The complainant said that he had never suggested that the interviewee’s response, per se, was casting doubt on climate change; he said he thought the business journalist “was pretty confident the interviewee would give the sort of uncertain reply he did which, I contend, served the purpose of undermining climate change concerns. Climate change is a hot topic and anyone who is given the chance to blame something on climate change, and fails to do so, is, by inference, reinforcing the climate change sceptic message”.

- The complainant also raised concern that the Trust’s Adviser had previously “held senior posts at Radio 4”.

The Committee’s decision

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

The Committee considered the complaint in relation to the Editorial Guidelines on Impartiality, noting the complainant's concern about the way the BBC reported matters relating to climate change. The complainant considered that there was "constant questioning of whether we are seeing different weather as a result of climate change" and he believed that this could "serve no purpose other than undermining the whole idea of climate change".

The Committee also noted the complainant's concern about the responses he had received to his complaint from the Editor of the *Today* programme via Audience Services.

The Committee considered that it was entirely reasonable for the interviewer to pose the question: "Is this just bad weather, bad luck or is this climate change we're looking at...?" The Committee agreed that this was likely to be a question which would be in the minds of listeners. The Committee did not agree that there was any evidence to support the complainant's assertion that the interviewer was casting doubt on climate change. The Committee considered that, in fact, the interviewer was highlighting the possibility of a link between the recent instances of extreme weather and climate change.

The Committee could discern nothing in the response from the interviewee to support the complainant's allegation of bias in the question. The Committee noted that the interviewee had, reasonably, explained that he was not a meteorologist but said that the frequency and severity of the floods seemed to be increasing. The Committee considered that listeners would not necessarily expect a non-expert to have an authoritative view on the science of climate change, and would be unlikely to take his lack of a definitive attribution of the recent flooding to climate change as evidence either way. The Committee concluded that there was no reasonable prospect of success for an appeal.

The Committee noted that the complainant had alleged that the output he had cited was part of a pattern of bias across a wide range of programming. The Committee was mindful that it did not consider that there was a reasonable prospect of it finding that the specific example of output cited was in breach of the Guidelines. The Committee noted that the complainant had not provided any other specific examples which could be tested in order to consider his allegation that there was a pattern of bias. The Committee agreed that without such evidence there was no reasonable prospect of success for a complaint of general bias.

The Committee then considered the points the complainant made in his appeal about the handling of his complaint. The Committee noted that the complainant considered the Output Editor's statement that "the question of the relationship between short term weather changes and longer term climate change is hotly debated within the scientific community" to be indicative of bias. The Committee noted that the complainant argued that such a view was not compatible with the Met Office comment that:

"Our climate change predictions support the emerging trend in observations and show a clear intensification of extreme rainfall events in a warmer world."

The Committee considered that the Output Editor's statement was not inconsistent with the Met Office comment and was not evidence of any bias. The Committee noted the complainant's point that he had never argued that specific weather events could be attributed to climate change. The Committee considered that the *Today* Editor had considered the subject of the interviewer's question to be the recent floods in the UK, and that these were the "short term weather changes" which he had said were hotly debated. The Committee agreed that the causes of the recent short term weather changes in the UK remained a matter of scientific debate, and it was not indicative of bias on the part of

the Output Editor to say so. The Committee did not agree that, in clarifying the point he was making, the Output Editor was “backtracking”.

The Committee considered that although the complainant was unhappy with the BBC’s responses, he had received a reasonable answer to his complaint and the Committee did not consider that there was evidence of bias in the responses of the Output Editor of the *Today* programme at Stage 1.

The Committee further considered that the complainant had received reasoned and reasonable responses at Stage 2. The Committee noted these responses were more detailed than those at Stage 1 and that the Head of Editorial Compliance and Accountability, BBC News, had explained her understanding that there was

“a general agreement among climate scientists that there has been an increase in extreme weather events and that some extreme weather events are likely to increase because of climate change. However, there’s little or no agreement that any specific extreme event can be attributed to climate change – the vast majority of scientists accept that weather events are caused by a huge number of variables and it isn’t realistic to say, for example, that a flood in location X has been caused by melting Arctic sea ice. That said, although this particular interview did not challenge the consensus view, you seem to suggest that the *Today* programme should not even pose the question of whether specific extreme weather events are linked to climate change. Not to do so as a matter of principle would be to disregard the need to pose the questions that may be in the minds of listeners and the BBC’s approach has been set out to you in previous responses. The *Today* programme has explored the impact of climate change on numerous occasions and it is far from the case that it is ‘trying to deflect attention’, as you suggest.”

The Committee noted the complainant’s view that the responses he had received did not address his substantive complaint regarding his allegation of bias on the *Today* programme with regard to climate change. However, the Committee considered that the responses the complainant had received were sufficient to demonstrate that there was no reasonable prospect that the complaint would be upheld if considered on appeal. The Committee did not consider that any compelling evidence had been presented to suggest that there had been a breach of the Editorial Guidelines on Impartiality. The Committee did not consider that there was a reasonable prospect of success for an appeal on the handling of the complaint.

Finally, the Committee noted that the complainant had raised the fact that the Trust’s Adviser had previously worked at Radio 4. The Committee was mindful that the Trust Unit is careful to mitigate potential or perceived conflicts of interest, and that processes are in place to safeguard against this. The Committee further noted that the Adviser had not worked for the BBC’s News division (which produces the *Today* programme). In addition, in this case, the decision that the complaint did not qualify for appeal and the letter informing the complainant of this decision were agreed with and approved by the Trust’s Head of Editorial Standards. The Committee did not consider, therefore, that the point raised by the complainant in relation to the Adviser was relevant to the issue before them which was whether the appeal qualified for consideration on appeal or that there was any evidence to support an allegation of bias in the Trust’s Adviser’s decision

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

Complaint handling – The Girl, BBC Four, 26 December 2012

The complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust following the decision by BBC Audience Services not to respond to his complaint regarding alleged inaccuracies in the BBC drama *The Girl* because the complaint was outside the normal time limit set by the BBC complaints procedure.

The complainant originally contacted the BBC regarding the portrayal of Alfred Hitchcock in *The Girl* which he considered contained inaccuracies and was unfair to Mr Hitchcock. He was of the view that the DVD of the film should be withdrawn from circulation and that an apology should be issued to Mr Hitchcock's family.

The Girl was broadcast on 26 December 2012 and the complainant said he had first contacted the BBC by letter on 29 December 2012 but had not received a response. The first contact with the BBC that was recorded was on 24 February 2013. On 8 March, before he had had a response from BBC Audience Services, the complainant wrote to the Trust reiterating his concerns. On 11 March, Audience Services sent a response to his complaint of 24 February which stated the complaint was outside their scope and it would not comment further. The complainant wrote to the BBC Trust on 17 March and 18 March repeating his complaint that the film *The Girl* contained inaccuracies and ought to be withdrawn from sale. He noted that another DVD *The Curse of Steptoe* about the lives of the actors from the series *Steptoe and Son* had been withdrawn from sale following a complaint to the BBC Trust. The Trust Unit referred the complaint about *The Girl* to the BBC for a further response on 20 March 2013. On 22 March, the complainant again contacted the BBC Trust requesting a meeting to discuss alleged inaccuracies in the film. On 6 April the complainant received a final response from the BBC which noted the first contact it had a record of receiving had been made on 24 February, which was outside the 30 working day time limit set out in the complaints framework, and that the complaint would not therefore be investigated. The complainant contacted the Trust on 11 April and stated that he wished to take his complaint further.

The Trust Unit's decision

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

The Trust's Adviser noted that the complainant stated he had complained within the timeframe but that there was no record that this letter had been received by the BBC. She noted that, while the complainant had supplied a copy of the letter which he said had been sent on 29 December 2012, this was not evidence of proof of postage.

The Trust's Adviser noted the BBC's Complaints Framework states that complaints should be received within 30 working days of the date at which the content was first broadcast, that is, in this case, by 8 February 2013.

The Trust's Adviser noted that the BBC had discretion to consider complaints even though they were out of time. However, she noted the procedural rules were there for good reason and were intended to be observed by all and that the BBC would only "exceptionally" exercise its discretion.

The Trust's Adviser noted that the complainant contacted the BBC on 24 February and the BBC had replied to this on 11 March but had not notified the complainant that his complaint was out of time and would not be considered. Instead, the complainant was told his complaint was outside the scope of the complaints service. In its subsequent correspondence of 6 April 2013, BBC Audience Services gave the complainant information about the DVD's distributor so that he would be able to contact them directly.

The Trust's Adviser noted that, although Audience Services had informed the complainant he was out of time, this had not been done when the complaint had first been received. However, she also noted that Audience Services had given the complainant a response that was relevant to his complaint and had given him information about how he could pursue it.

The Trust's Adviser said that, in considering whether a matter is out of time, the underlying seriousness of the allegation is a matter which may also be considered. Turning to the underlying issue, the Trust's Adviser noted the film had been based on interviews carried out with one of Alfred Hitchcock's leading ladies, Tippi Hedren, among other contributors, and that she had stood by the version of events portrayed in the film.

The Trust's Adviser noted that the complainant referred to another case in which a DVD had been withdrawn. She noted that on that occasion, the complaint had been made by a close relative of one of the people whose life featured in the film who had alleged unfairness. She considered this was a significant difference and that there was no suggestion the complainant was acting on behalf of Alfred Hitchcock's surviving relatives.

The Trust's Adviser agreed that the complaint was out of time and considered the appeal against the BBC's handling did not therefore 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. He said that the appeal should be considered, even though it was outside the normal time frame, because the drama was "pretending to be the truth – and was broadcast on the BBC, but misled the British people, betraying their trust and masquerading as objective truth".

The complainant was of the view that whether or not his complaint was received by the BBC out of time was beside the point. He stated that *The Girl* had a claim at the front of the programme that the drama was based on extensive interviews with the surviving cast and crew.

The complainant stated that three of the crew members interviewed for *The Girl* had told the complainant on tape and in correspondence that they did not endorse the portrayal of Mr Hitchcock in *The Girl*. The complainant said that the drama was based solely on one of the contributor's memories, with a single biographer of Alfred Hitchcock acting as consultant.

The complainant gave examples of where he believed the film had been misleading and unfairly represented Alfred Hitchcock. The complainant said that the BBC had a responsibility to portray Alfred Hitchcock fairly and accurately, and he alleged the film had greatly upset the Hitchcock family. The complainant said that the film had misled the British public and referred to other media social networking sites as evidence.

The complainant said that he had written three books on the subject, with a fourth under way, and that the BBC should take him up on his offer of correction.

The Committee's decision

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

The Committee noted the complainant's view that his complaint should be considered, even though it was outside the normal timeframe, because the drama was "pretending to be the truth – and was broadcast on the BBC, but misled the British people, betraying their trust and masquerading as objective truth".

The Committee noted that the complainant stated he had complained within the timeframe but that there was no record that this letter had been received by the BBC. The Committee agreed that, while the complainant had supplied a letter which he said had been sent on 29 December 2012, this was not evidence of proof of postage. The Committee agreed that the complainant's first recorded contact with the BBC had been on 24 February 2013, outside the 30 working day time limit, and that there was no reasonable prospect of success for an appeal against the BBC's decision not to answer the complaint on that basis.

The Committee noted that the complainant felt strongly that the film portrayed Mr Hitchcock inaccurately and it considered whether the underlying seriousness of the complainant's allegations merited the complaint being considered outside the normal timeframe.

The Committee noted that the film had been based on interviews carried out with one of Alfred Hitchcock's leading ladies, Tippi Hedren, among other contributors, and that she had stood by the version of events portrayed in the film. The Committee was mindful that, in the case of *The Curse of Steptoe*, which the complainant had referred to, the issue had been one of unfairness and had been brought by a close surviving relative. The Committee noted that there was no suggestion that the complainant was acting on behalf of anyone portrayed in the film. That being the case, the Committee did not feel the complaint should be considered as an exception to the BBC complaints procedure.

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

“Probe into missing Robbie tickets”, BBC News Online

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, at Stage 2, not to uphold his complaint dated November 2012 regarding a BBC News Online article about a ticket brokers, first posted and last updated in September 2006. The article described how trading standards officers were investigating complaints after fans who had bought tickets for a Robbie Williams concert through the ticket brokers had not received their tickets. The article reported that the ticket brokers had ceased trading and included a quote from a member of the Trading Standards team who said they had been told the company had ceased trading.

The complainant stated that the company had at no point ceased trading.

The complainant first escalated his complaint to the BBC Trust on 15 February 2013 following the decision by the BBC News online team not to investigate his complaint at Stage 1. Following the Trust’s intervention, the complaint was referred to Stage 2 and a response was given by the Head of Editorial Compliance and Accountability, BBC News. The complaint was not upheld.

The complainant’s concerns in his second appeal to the Trust on 22 April 2013 were:

1. Alleged continuing inaccuracy contained in the BBC News online archived article about the ticket brokers. He said that the article was defamatory and should be removed.
2. The manner in which the complaint had been handled, which he felt had not only lacked courtesy but also been rude.

The Trust Unit’s decision

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

The Trust’s Adviser considered the substantive complaint in relation to the Editorial Guidelines on Accuracy.

She noted that in the responses given at Stages 1 and 2 of the complaints process the complainant had been asked to provide evidence of the alleged inaccuracy regarding his client, but that he had declined to provide any, on the grounds that he considered it was a matter for the BBC to research the facts themselves.

The Trust’s Adviser noted that no evidence had been produced that cast doubt over the main substance of the original article – which had reported that fans who had bought tickets for a Robbie Williams concert through the ticket brokers had failed to receive them.

She noted that the complainant's original complaint hinged on whether or not the firm had "ceased trading". She noted that the BBC had carried out its proposed amendment of the online article so that it now said the company had "reportedly ceased trading". She considered this reflected the statement made by the Trading Standards official, who at the time of the original article had been quoted as saying:

"These complaints [from fans], along with being told the company had ceased trading, compelled us to launch an investigation..."

"Westminster's trading standards team are doing everything in their power to get to the bottom of what is going on with this ticket agency."

The Trust's Adviser noted the Head of Editorial Compliance and Accountability, BBC News, had further referred to this in her letter of 3 April, which stated:

"I hope that the addition of the word 'reportedly' has resolved the issue but if not I must ask you to give me the detail previously requested as to why the report was inaccurate."

The Trust's Adviser considered Trustees would be likely to conclude the amendment was a reasonable response to the concerns that had been raised and was an appropriate reaction to ensure the article was duly accurate. Therefore she considered the appeal did not have a reasonable prospect of success on this point and she did not propose to put it before Trustees.

The Trust's Adviser noted that BBC News Online had stated its position regarding the online archive on 5 December 2012, when it wrote: "It is not our practice to remove stories from our archive." This had been reiterated by the Head of Editorial Compliance and Accountability in her response of 3 April, which stated:

"The BBC must have a very high threshold for agreeing to the removal of content from the archive because of the value we place on BBC independence and trustworthiness; if we remove or alter content we effectively censor the past. However, as has been explained from the start, we of course want to make sure that our reports are accurate at the time of writing and are always open to making corrections."

The Trust's Adviser noted this was the BBC's policy and, as she considered Trustees would be likely to conclude the report was duly accurate, she did not foresee this element of the appeal had a reasonable prospect of success and therefore did not propose to put it before Trustees.

With regard to the complaints handling aspect of the appeal, the Trust's Adviser noted the response of the Head of Editorial Compliance and Accountability, BBC News, who felt that the complaint had been handled well for the most part, but had agreed that an email response dated 21 December 2012 was open to the interpretation that it was discourteous, and she had undertaken to raise the matter with the complaints handler. The Head of Editorial Compliance and Accountability, BBC News had apologised for the fact that the response had caused offence to the complainant and the Trust's Adviser was sure the Trustees would wish her to add her apologies too. She noted that in such circumstances where the Executive has apologised, Trustees would normally consider the matter resolved.

The Trust's Adviser noted that the written exchanges with the BBC News Online team had been timely and that News online had sought further information about the nature of any inaccuracy in the report and had suggested measures in order to address the complainant's concerns. The Trust's Adviser also noted that at Stage 1 and Stage 2 the complainant had been advised how to escalate his complaint if he wished to do so.

The Trust's Adviser noted that one element of the appeal relating to complaints handling was the decision by BBC News Online not to give the names of the members of staff who replied to complaints. She acknowledged the strength of the complainant's feelings on this matter; however, she considered that it was a matter for the BBC Executive, who had chosen not to require that people responding to complaints at Stage 1 had to give their names as they were vulnerable to online criticism. She noted that the complainant felt this argument was undermined because the identity of respondents at other stages in the complaints process was given. She considered Trustees would be likely to conclude that there was no requirement for respondents at Stage 1 to give their identities even though more senior staff did give their identities and therefore this element of the appeal did not have a reasonable prospect of success.

The Trust's Adviser considered that Trustees would be likely to conclude that overall the BBC had sought to address the concerns raised in a reasonable and timely manner and did not consider this element of the appeal had a reasonable prospect of success. Therefore she 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 made the following points:

1. The Trustees should be aware of how matters are conducted on their behalf. This was a simple matter which should have been easily resolved, but was not. The complainant was concerned that if a simple matter could not be resolved, how would more complex issues be dealt with? He was also concerned that if he, as a solicitor, was dealt with in such a poor manner, how would other complainants be treated?
2. The BBC should have checked their own Guidelines on Accuracy which would have led to the matter being dealt with appropriately, with checks carried out by the BBC at Companies House, as required by the BBC Guidelines (Section 3.1 and 3.4.2) which would have revealed that the client company remained in existence throughout. The error should have been acknowledged and corrected (Section 3.2.4). This has not happened and the article should be withdrawn.
3. The complaints process is:
 - a) Supportive of erroneous articles
 - b) Supportive of anonymity. The complainant does not know who dealt with his initial complaint and such anonymity can lead to personnel believing they can say what they wish with impunity.
4. The Executive has not accepted that the tone and manner of the responses was discourteous. The phrase was "open to interpretation" which was equivocal. The apology was qualified to "I am sorry if you did take offence" which was stated to be an apology, but was not.

5. There should be an independent body as the final arbiter of such complaints.

The Committee's decision

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

The Committee noted the complainant's concern about the way in which his complaint had been handled, and that he felt the substance of his complaint was a simple matter which could have been resolved if the BBC had acknowledged that they had made an error and corrected it and had dealt with his complaint in a more courteous manner.

The Committee noted the length of time which had passed before the substantive complaint was lodged about the online article which was first posted in 2006, and that the BBC had added the word "reportedly" in an attempt to resolve the issue. The Committee also noted that the complainant had declined to give the BBC details of why he considered that the report was still inaccurate, insisting that the BBC should research the matter themselves.

The Committee also noted that no evidence had been produced which cast doubt over the main substance of the original article – which had reported that fans who had bought tickets for a Robbie Williams concert through the Harley Street Ticket Brokers had failed to receive them.

The Committee noted that the complainant had asked for the article to be removed, and that BBC News had explained its policy with regard to the online news archive to the complainant:

"The BBC must have a very high threshold for agreeing to the removal of content from the archive because of the value we place on BBC independence and trustworthiness; if we remove or alter content we effectively censor the past. However, as has been explained from the start, we of course want to make sure that our reports are accurate at the time of writing and are always open to making corrections."

The Committee noted that no evidence had been presented to support the allegation of continued inaccuracy, and also that, in response to the complainant's original allegation of inaccuracy, the BBC had made a modification to the article by adding the word "reportedly". Taking those factors into consideration, and also the fact that a number of years had passed before the complainant contacted the BBC after publication of the online article, the Committee considered that the appeal would not have a reasonable prospect of success were it to proceed further.

With regard to the issue of the handling of the complaint, the Committee noted the response of the Head of Editorial Compliance and Accountability, BBC News, who felt that the complaint had been handled well for the most part, but had agreed that one email response was open to the interpretation that it was discourteous, and she had undertaken to raise the matter with the complaints handler. The Committee noted that she had not directly apologised for the matter, but had agreed that it was "regrettable". The Committee agreed that it was incorrect for the Trust's Adviser to have described this as an "apology". However, the Committee agreed with the principle that a shortcoming had

been accepted and action taken as a result. The Committee was satisfied that this was sufficient to resolve any problems that there might have been with the tone of this correspondence.

With regard to the anonymity of Stage 1 complaint handlers, the Committee concluded that the complainant had received reasonable responses about the BBC complaints policy in that regard.

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

Decision of BBC Audience Services not to respond further at Stage 1b regarding on-screen behaviour

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 BBC Audience Services not to respond further at Stage 1b to his complaint about the behaviour of presenters while driving; programmes which show people smoking; the use of bad language in programmes.

After a series of exchanges, BBC Audience Services closed down the complaint explaining it had nothing further to add to its earlier correspondence and that it did not consider the complainant had raised a possible breach of standards. The complainant appealed to the Trust against that decision. He repeated the three elements of his initial complaint and said that he had also complained at stage 1 about an episode of *Last Tango in Halifax* which had shown a driver using a mobile phone, which he had not had a response to.

The Trust Unit's decision

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

The Trust's Adviser noted that the complainant's initial complaint to the BBC had received a substantive response on 20 June 2012. This stated:

"I understand you feel our presenters regularly take their eyes off the road while driving. I also note your concerns regarding the language content of some programmes, as well as scenes of characters smoking.

"We are aware that looking to the camera while driving may present unacceptable risks or breaches of the law if not managed appropriately and as such the BBC has always had a policy in place reminding producers to take due care which states:

"All drivers, including presenters doing pieces to camera, need to keep their eyes on the road. They should be briefed to do so and encouraged only to glance at the camera for example for the same length of time they would inspect their instruments or look in the rear view mirror. They should also keep both hands on the wheel when recording pieces to camera with the exception of the occasional gesture or operation of controls.

"Whilst we appreciate your views in this matter, we can only assure you that we will continue to take great care on the rare occasions that it is necessary to do a piece to camera whilst driving.

"Regarding language, the main difficulty for broadcasters is that people have different personal definitions of acceptable language and there's no single set of

standards in this area on which the whole of society can agree. The BBC has issued detailed guidelines to programme makers in order to try to minimise the risk of gratuitous offence, but our public service role requires us to reflect the world as it really is. Inevitably this means we have to acknowledge that some people behave in an anti-social manner and if we're to represent plausibly the way people actually speak, often in highly charged situations, this will occasionally include a degree of bad language.

"Turning to smoking, production teams take great care to minimise the amount of smoking actually seen, particularly with younger characters who might be seen as role models. We know that many viewers disapprove of seeing actors smoking in television drama, but smoking is still a practised, legal habit. Contemporary drama would lack realism if characters were not sometimes seen to be smoking, and it would be unrealistic to impose a ban.

"The acceptability of common forms of social behaviour like smoking or drinking tends to alter over time. There is a difficult balance to be struck by programme makers between the danger of encouraging potentially damaging habits, particularly amongst the young, and the need to reflect the range of public attitudes and behaviour realistically. In dramas there are cases when smoking may be essential to a character or story. However, over the years the BBC has played a large part in informing the public in appropriate programmes of the dangers of smoking, and we will continue to do so in the future."

The Trust's Adviser noted that the complainant had renewed his complaint to the BBC on 10 September 2012 and again on 20 February 2013. She noted that substantive responses had been sent by BBC Audience Services on 6 November 2012 and 5 March 2013. Following a further complaint on 10 March 2013, BBC Audience Services closed down the correspondence and stated it had nothing to add to its earlier responses and did not consider the complainant raised issues that were potential breaches of the Editorial Guidelines. The Trust's Adviser noted the complainant said he had also complained about two characters in the drama series *Last Tango in Halifax* whom he said had been shown driving while using mobile phones, which had not received a response. However, the Trust's Adviser considered that the earlier responses had made clear that drama programmes had leeway to show characters behaving in a way that would be in keeping with their fictional personae.

While the Trust's Adviser appreciated the strength of the complainant's feelings on these issues, she considered that Trustees would be likely to conclude that BBC Audience Services had given reasonable responses to the complaints raised and had therefore acted appropriately in closing down the correspondence. She considered therefore that the appeal did not have a realistic prospect of success and should not be put before Trustees.

For the sake of completeness, the Trust's 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 (paragraph 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 in a specific programme which did not apply in this case. She considered that decisions to show actors in *Last Tango in Halifax* using mobile phones while driving and actors in *Dancing on the Edge* smoking fell within the BBC's "editorial and creative output" and were the responsibility of the Executive. Therefore the Trust's Adviser considered that in any event it would not have been

appropriate for Trustees to have considered the underlying complaint.

Request for review by Trustees

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

1. The BBC's rules given to presenters regarding behaviour when driving are not being adhered to. The complainant said that it would seem that once the BBC has made rules, it does not then ensure the rules are being kept to.
2. The suggestion that showing characters using a mobile phone whilst driving "is within keeping with their fictional personae" was a silly cop out. He said it was wrong and this should be admitted.
3. The majority of viewers object to foul and obscene language and should not be subjected to it, especially outside drama programmes.
4. There are so many reasons why the BBC should not show smoking and no logical or acceptable reason why it should. The complainant attached a copy of a letter printed in a newspaper which referred to the Welsh government's no smoking policy in film and television production made in Wales.
5. The complainant said that he had been requested to give examples of programmes showing excessive smoking. He specified *George Gently* and *Dancing on the Edge* but said he received no response from the BBC after giving these examples.
6. He said he had asked four times if an actor can refuse a direction to smoke if his character is required to smoke in a drama. He asked why no-one had supplied an answer on this point.

The Committee's decision

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

The Committee noted the strength of the complainant's concerns regarding the behaviour of presenters while being shown driving, the use of strong language in programmes, and the issue of smoking in drama productions.

The Committee considered the responses that had been given to the complainant at Stage 1 and agreed that these had been extensive and adequately set out the BBC's position on the issues which he had raised. The Committee noted that the BBC had made clear that drama programmes had leeway to show characters behaving in a way that would be in keeping with their fictional personae. With regard to programme presenters looking at the camera while driving, the Committee noted that the BBC had explained that it understands the risks and has a policy in place to remind producers to take due care. The Committee noted that the BBC had said it will continue to take great care on the rare occasions that it is necessary to do a piece to camera whilst driving.

The Committee noted that the complainant had continued to correspond with the BBC on the same subjects. The Committee agreed that the complaints were repetitive. The Committee was satisfied that the decision not to investigate further at Stage 1 was proportionate and appropriate, taking into account the replies that had already been given and the underlying substance. The Committee agreed that there was no reasonable prospect of success for an appeal against Stage 1's decision not to investigate the complaint further.

The Committee noted that the complainant had developed his arguments further in his response to the decision of the Trust's Adviser but it was satisfied that the complainant had not provided any reason for Trustees to conclude that BBC Audience Services had been incorrect in ceasing correspondence.

The Committee considered that it would be likely to conclude that the complainant had received reasonable responses from BBC Audience Services on all the points raised and it was appropriate for them to say that they had nothing further they could usefully add.

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

Decision of BBC Audience Services not to respond further at Stage 1b regarding alleged bias in the BBC and the complaints process

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 bias in the BBC's drama output and the complaints process.

The complainant had initially written to the BBC to raise his concerns that the BBC was drawing its staff from a narrow pool of people with "socially liberal values" and that the BBC's staff did not reflect the views of society as a whole. The complainant felt that this impacted on the BBC's drama content and that the BBC was biased and that standards of programming had declined. The complainant cited examples of what he felt were the declining standards and liberal bias of the Corporation. The complainant also raised concerns about what he felt was a "culture of arrogance" at the BBC and that this was reflected in the BBC complaints process, where the first line of action was one of defence.

The Trust Unit's decision

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

The Trust's Adviser noted the complainant's concerns about recruitment of staff to the BBC and the BBC's recruitment practices.

The Trust's Adviser considered that Trustees would be likely to conclude that Audience Services had provided a reasonable response to the complainant's concerns and that the BBC had acted appropriately in declining to enter into further correspondence. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

The Trust's Adviser noted the complainant's concerns with regard to what he perceived as the arrogance of the BBC and that he felt the BBC complaints process was a "whitewash". The Trust's Adviser noted that although the complainant remained unhappy with the Executive's responses to his complaint, they had attempted to address his concerns in some detail. The Trust's Adviser noted that the Executive had accepted that the choice of wording used in one response to the complainant was not appropriate and had apologised for this. She was sure the Trustees would also wish her to add her apologies too. She noted that where the Executive had accepted a mistake had been made and apologised, Trustees generally considered the matter resolved (unless there were features to the breach which suggest it was so serious that further action might be necessary). The Trust's Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided the appeal did not have a reasonable prospect of success as it has been resolved.

The Trust's Adviser hoped that the complainant's concerns would be addressed in some measure by the fact that complaints handling was a matter that the Trust was keeping under close review. The Complaints Framework was revised last year and the Trust will be carrying out a "mystery shopping exercise" this summer to look at how the new framework is working. The results of that will be published later in 2013.

Although the appeal was of the decision at Stage 1 not to investigate further, the Trust's Adviser noted that, in relation to the underlying complaint, 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 (paragraph 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.

The Trust's Adviser noted that decisions relating to employment policies and practices (with the exception of appointments to the Trust Unit) were day to day operational matters and were the responsibility of the BBC Executive. The Trust's Adviser therefore considered that the issues the complainant raised regarding the recruitment of staff to the BBC were an operational matter, responsibility for which lay with the BBC Executive and not the Trust.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that it was beyond doubt that the BBC is culturally biased towards socially liberal, moderately left wing views.

The complainant reiterated his view that BBC News is impartial and said he suspected that the questions asked by the BBC with regard to impartiality were related to news output. He said that, if people were asked whether they considered the BBC to be impartial in non-news output the answer would be different.

The complainant said that his view of left wing bias was reinforced by

- a) the decision of the Head of Comedy to allow the 'c' word to be used.
- b) "that army of apologists employed by the BBC saying that as the 'c' word no longer had shock value, it was acceptable".

In relation to the Trust's role under the Royal Charter, the complainant queried how the Trustees ensured the Charter was enforced if they did not deal with any operational management issues connected with the employment of staff.

The Committee's decision

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

The Committee noted that the complainant had initially written to the Director-General to complain about general liberal/left wing bias in the BBC's non-news output with reference to several specific examples. The Committee noted that the complainant had alleged that

the source of this alleged bias was the BBC's employment policies. The Committee noted that the letter was addressed to the Director-General but was copied to the Chairman of the Trust and included a question about when the Board last reviewed its employment policies.

The Committee noted that there was then an exchange of correspondence between the complainant and BBC Complaints, and that on 15 January 2013 BBC Complaints said that they had nothing further to add and would not enter into any further correspondence on the issue.

The Committee noted that the complainant had then contacted the Trust, and the Trust Unit agreed that BBC Complaints should have provided the complainant with a further response. The Trust Unit said that it had returned the complaint to BBC Audience Services for a further response. The Committee noted that the Trust Unit also referred to the question asked by the complainant regarding employment policies in his letter to the Director-General. The Trust Unit explained that under the Royal Charter operational management of the BBC, including recruitment of staff, is the responsibility of the Executive and not the Trust.

The Committee noted that the Complaints Manager for BBC Audience Services had written to the complainant to apologise for the reply sent to the complainant on 4 December. The Complaints Manager said that he was unhappy with both the length and the tone of the reply. The Committee noted he said that, while his colleague who replied had at least attempted to address each and every point the complainant raised, it was unnecessary to go to such great length nor was the choice of wording appropriate.

The Committee noted that the Complaints Manager had gone on to say that,

"Your complaints were very broad and covered our employment policies and what you perceive as the 'cultural bias of elements of the BBC'. I note that you stated you did not believe it was appropriate for BBC Audience Services to respond to these concerns and that you believe the matter is something only 'the Board and the senior executives' could address. On 15 January we responded to say we had nothing further to add to our replies to your previous points and that we did not feel you had raised any issues suggesting a possible breach of standards.

"While I hope you will accept my apologies for our initial response (and again for the delay in getting back to you), I do not believe there is anything more we can say in response to your concerns. As before, you may request a review by writing to the BBC Trust within 20 working days, explaining why you believe our decision is inconsistent with the BBC's complaints procedures."

The Committee agreed with the Senior Editorial Strategy Adviser that the BBC had attempted to address the complainant's concerns in some detail and had accepted that the choice of wording used in one response to the complainant was not appropriate and had apologised for this. The Committee noted that the complainant had cited examples of what he perceived to be cultural bias at the BBC; however, Trustees agreed with the Audience Services Complaints Manager that the complainant had not raised any issues which suggested a possible breach of editorial standards.

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

With regard to the complainant's question about the operational management of the BBC,

Trustees were mindful that the Royal Charter is clear that, with the exception of the Director-General, the BBC Trust is not responsible for the recruitment of BBC staff. Trustees were satisfied that this is an operational matter which is for the Executive Board and not the BBC Trust.

The Committee noted the complainant's comments with regard to the use of strong language. The Committee considered that no words are banned outright but that, where potentially offensive language is used in the BBC's output it should be editorially justified with regard to context, audience expectations and appropriate signposting.

The Committee acknowledged that the complainant's concerns about the BBC's impartiality related specifically to non-news output and that the Trust's most recent review of impartiality had looked at the breadth of opinion reflected in the BBC's news and current affairs output. The Committee was mindful that, if the complainant wished to raise any concerns about the impartiality of a specific item of non-news output then this could be done by bringing a complaint to Audience Services as set out in the complaints process. The Committee noted that the requirements of due impartiality in drama, entertainment and culture, however, are different from those in news and current affairs.

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

Decision of BBC Audience Services not to respond further at Stage 1b about Howard Goodall's Story of Music, BBC Two, 23 February 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 appealed to the BBC Trust after BBC Audience Services declined to correspond further regarding his original complaint because they had nothing further to add and did not consider the complaint raised a possible breach of the BBC's Editorial Guidelines.

The complainant had originally contacted the BBC about *Howard Goodall's Story of Music*. The presenter had referred to Arnold Schoenberg and his followers and said they had:

"...produced decades of scholarly hot air, books, debates and seminars and, in its purest, strictest form, not one piece of music that a normal person could understand or enjoy in one hundred years."

The complainant considered that was an offensive remark. The complainant noted:

"Schoenberg's music is not difficult to listen to, although it is possible to dislike it."

In his appeal to the Trust, the complainant said:

"Could you therefore simply confirm that Howard Goodall saying that people like me are not normal in no way breaches Editorial Guidelines nor your standards [as stated] please?"

"If this is the case, please explain how you would feel had he called 'not normal': women, black people, Jewish people, gay couples, vegetarians, people who dress in red clothes, trainspotters...or any similar group?"

The Trust Unit's decision

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

The Trust's Adviser noted the complainant had first contacted the BBC on 1 March 2013. He had received a response from BBC Audience Services on 1 April 2013. The response included an apology for the delay and, in terms of the comment about Schoenberg's music, it stated:

"This was, however, Howard's own view being expressed. As he said at the beginning of the programme, 'there are many ways to sum up the story of music, this is mine...'"

"In this case, Howard was trying to make the point about how difficult it is for

many to understand Schoenberg's work, but we're very sorry for any offence caused."

The complainant remained unhappy and renewed his complaint on 2 April. He said that Howard Goodall had "stated a 'fact' that people like me are not normal".

BBC Audience Services responded on 18 April 2013 and notified the complainant that it had nothing further to add to its previous response and, as it did not consider the complainant raised an issue that might be a breach of the Editorial Guidelines, it did not intend to respond further. The complainant was notified that he could appeal against that decision to the BBC Trust.

The Trust's Adviser noted the Complaints Framework which stated:

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

She noted that the Guidelines allowed programmes to include "Personal View Content" and the Guidelines related to them stated:

4.4.29

The BBC has a tradition of allowing a wide range of individuals, groups or organisations to offer a personal view or opinion, express a belief, or advance a contentious argument in its output. This can range from the outright expression of highly partial views by a campaigner, to the opinion of a specialist or professional including an academic or scientist, to views expressed through contributions from our audiences. All of these can add to the public understanding and debate, especially when they allow our audience to hear fresh and original perspectives on familiar issues.

Such personal view content must be clearly signposted to audiences in advance.

She noted the introduction to the programme and considered that it clearly established the series was an authored piece of work. In the introduction, the presenter said:

"In this series, I have been tracing the story of music from scratch. To follow it on its miraculous journey, misleading jargon and fancy labels are best put to one side. Instead, try to imagine how revolutionary and how exhilarating many of the innovations we take for granted today were to people at the time.

"There are a million ways of telling the story of music. This is mine."

With that in mind, the Trust's Adviser considered Trustees would be likely to conclude that the programme was an authored work and the audience would have understood that to be the case, so that the views expressed by the presenter were his alone.

She considered that this point had been made to the complainant in the response he had received on 1 April 2013. She noted too that BBC Audience Services had apologised for the offence felt by the complainant. Bearing those points in mind, she considered Trustees would be likely to conclude BBC Audience Services had acted reasonably in stating there was nothing further they had to add to the correspondence and in closing down the complaint. Therefore she did not propose to put the appeal before Trustees as she did not consider it had a reasonable prospect of success.

For completeness, the Trust's Adviser considered the underlying complaint raised. She noted that the comments were made in the fifth episode of a six-part series. In relation to Schoenberg's music, the presenter had stated:

"Mahler's music began to destabilise the centuries old Western musical system he'd inherited. His pupils in Vienna, led by Arnold Schoenberg, actively wanted to dismantle completely the familiar systems that had underpinned all music for hundreds of years and replace them with a brand new system.

"This academic rebellion was later labelled serialism or atonality. And it produced decades of scholarly hot air, books, debates and seminars and, in its purist, strictest form, not one piece of music that a normal person could understand or enjoy in one hundred years.

"That's not to say that serialism hasn't always had a cultish following. But for sure, these composers weren't courting a mainstream audience.

"Had serialism had any chance of appealing to a paying public, one composer who would surely have opted into it was the musical magpie, Richard Strauss. Germany's leading composer after Mahler's death..."

The Trust's Adviser noted that the complainant considered those who did enjoy Schoenberg's music might, by implication, be thought 'not normal' and he found that offensive. However, the Trust's Adviser noted the programme had made clear that Schoenberg – and similar atonal composers – had attracted a good number of loyal listeners and she considered that the programme established it was possible to like that form of music.

She noted the complainant raised the following question:

"...please explain how you would feel had he called 'not normal': women, black people, Jewish people, gay couples, vegetarians, people who dress in red clothes, trainspotters...or any similar group?"

She considered that was a hypothetical question and did not form a useful parallel with the comment that was the subject of the complaint. She noted that the Editorial Guidelines on Portrayal stated:

5.4.38

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

In response to the complainant's query in his appeal to the Trust, she considered that the Guidelines on Portrayal were not intended to apply to people who admired a particular form of music.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant made the following points in response to the Senior Editorial

Strategy Adviser's decision:

- The presenter had not made a point about how difficult it is for many to understand Schoenberg's work, but instead had stated very plainly that anyone who understood or enjoyed it was not normal.
- The presenter was not attempting to express his views but was "delivering his own prejudice" as a simple historical fact. It was not an implication that those who did enjoy Schoenberg's music might be thought "not normal" – it was a "simple bald statement" and not even offered as a personal opinion.
- The presenter made several errors in his statements about Mahler.
- The programme had not established that it was possible to like that form of music, as Goodall had told his audience that it was only possible to enjoy it if we're not normal.
- The complainant's question about labelling other groups of people not normal was not hypothetical; it was pertinent and an exact parallel.
- The presenter had breached the Guideline requirement for "avoiding careless or offensive stereotypical assumptions" (5.4.38) because the programme was not based on carefully researched historical and musical facts.
- With regard to the Trust's Adviser's comments that the Guidelines on Portrayal were not intended to apply to people who admired a particular form of music, admiring a particular form of music was not what either the presenter or himself were talking about.
- If the statement had been presented as the presenter's personal view, he would not have had a problem with the programme, but it was clearly presented as fact.

The Committee's decision

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

The Committee noted that the complainant did not accept the premise that the comments were a personal view but thought that Mr Goodall was "delivering his own prejudice as a simple historical fact".

The Committee also noted that the complainant was of the view that the programme breached the Editorial Guidelines on Portrayal with regard to "avoiding careless or offensive stereotypical assumptions" (5.4.38). The complainant said that Howard Goodall's comments were careless because the programme "had had no real research, and had no basis in fact at all".

The Committee noted that the complainant had received a response from Audience Services which included an apology for any offence caused and a statement that the programme was presented as a personal view:

“This was, however, Howard’s own view being expressed. As he said at the beginning of the programme, ‘there are many ways to sum up the story of music, this is mine...’

“In this case, Howard was trying to make the point about how difficult it is for many to understand Schoenberg’s work, but we’re very sorry for any offence caused.”

The Committee noted that the BBC had said it would not engage in further correspondence as the complaint did not suggest a possible breach of standards.

The Committee agreed that it was clear from the context of the programme that this was a personal approach to the subject matter. The Committee was satisfied that the presenter’s view about the ability of “normal” people to understand and enjoy the music produced by the proponents of atonality in its strictest, purist form did not suggest a breach of the relevant standards (the Editorial Guidelines). The Committee agreed that the programme had, by referencing “a cultish following” of Schoenberg’s music, stated that it was credible to enjoy Schoenberg’s music, albeit outside “a mainstream audience”. The Committee agreed that the complainant’s question regarding whether a similar comment could be made about other types of people was hypothetical and not relevant to the question of whether the Editorial Guidelines had been breached by what had been said in this particular programme.

The Committee considered that the complainant had received reasonable responses from BBC Audience Services and that it was appropriate for them to say that they had nothing further they could usefully add in this instance.

The Committee concluded that there was no reasonable prospect of success for an appeal against the decision of BBC Audience Services not to respond further.

The Committee noted that the complainant had made further criticisms of the accuracy of the programme in his correspondence with the Trust. The Committee noted that at the time BBC Audience Services had taken the decision not to respond further, the complaint had been focussed on the alleged offensiveness of the remark about atonalism. The Committee therefore agreed that these subsequent criticisms of the programme constituted new complaints and were not material to its consideration of the decision of Audience Services not to respond further to the complaint that had been made at that stage.

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

Decision of BBC Audience Services not to respond further at Stage 1b about Desert Island Discs, BBC Radio 4, 10 February 2013

Two complainants asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainants' appeals did not qualify to proceed for consideration by the Committee.

Appeal to the BBC Trust

The complainants appealed to the BBC Trust after BBC Audience Services declined to correspond further regarding their original complaints because they felt they had nothing further to add and did not consider the complaints raised a possible breach of the BBC's Editorial Guidelines.

The complaints related to an edition of *Desert Island Discs* broadcast on 10 February 2013 which featured an interview with the journalist Julie Burchill.

Both complainants stated that the BBC showed bias in playing *The Exodus Song* by Andy Williams (which was chosen by Ms Burchill as one of her eight 'desert island' records) whilst in 2010 BBC Radio 1Xtra had edited the lyrics 'Free Palestine' from a Mic Righteous song by adding a sound effect over them. They saw a contradiction in the BBC's approach to these two programmes and alleged that this contradiction demonstrated a lack of impartiality. The complainants also alleged that the BBC showed bias in playing the Israeli National Anthem, which was another of Ms Burchill's chosen records.

The Trust Unit's decision

The Head of Editorial Standards, BBC Trust, issued a consolidated response to the complainants explaining that she did not consider that their appeals had a reasonable prospect of success. She did not propose to proceed in putting the appeals to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the references in the programme to the musical choices which were at the root of this complaint:

Presenter: What's next?

Ms Burchill: It's Exodus, the Exodus theme by Andy Williams, who's got a wonderful voice. I love this song. It's from a film about the birth of Israel. I have been fascinated by the Jews since I was a child. I don't know why I got no Jewish blood and when I hear this song oh dear I'm going to cry.

And later in the programme:

Presenter: We're on your seventh disc Julie Burchill, what are we going to hear?

Ms Burchill: HaTikvah, the Israeli national anthem. I've never liked the English national anthem. I'm not a monarchist and it annoys me. I remember going to see Born Free the film about lions

where they used to play the national anthem at the end and I remember my mum saying 'get up, get up!' and I wouldn't get up for it. So, to hear a national anthem that I adore and can stand up for and I can even sing a little bit of it.

And later when Ms Burchill is asked to pick just one disc for her Desert Island:

Ms Burchill: I would pick HaTikvah, the Israeli national anthem. I would lie on the beach, reading my friend's book, getting drunk on this cocktail, and I'd listen to the Israeli national anthem and I would think about this beautiful country so far away from me and I would be happy.

The relevant correspondence was also reviewed by the Head of Editorial Standards and an independent editorial adviser.

The Head of Editorial Standards also noted the BBC's guidelines on due impartiality which state:

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

She noted that the Mic Righteous track was played on BBC Radio 1Xtra when sound effects were used to mask the shout "Free Palestine". She noted the ESC's decision on this appeal (which can be read at http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/dec.pdf)

The Head of Editorial Standards noted in particular that the ESC's decision in this previous appeal had been that:

"The Committee agreed that it is for the Executive to decide what to include and what not to include in a broadcast, provided the result does not lead to a breach of the BBC's Editorial Guidelines. The Committee agreed that its duty was to assess whether the material as broadcast was likely to have been in breach of the BBC's Editorial Guidelines, in this case those relating to impartiality. The Committee therefore considered the material as broadcast and not the reasoning provided by the Executive for the decision to edit out the reference to Palestine.

"The view of the Committee was that, while the BBC's treatment of the matter had perhaps been over cautious, the effect of removing the word 'Palestine' did not render the material which was broadcast biased. The Committee noted that the Executive had acknowledged that it was looking to learn from the way the matter had been handled and that the BBC had said the song would be likely to be played in full, with contextualisation, in the future."

She noted that *Desert Island Discs* was a well established format of over seventy years in which contributors made their own music selections and that part of the appeal of the programme was that listeners were able to reach their own conclusions about the music choices and the light they shed upon the character and experience of each "castaway".

The Head of Editorial Standards concluded that, taking account of the nature of the content and the likely audience expectation, the two cases were very different. Each should be judged on its own merits. In her view the complaints at Stage 1, whilst clearly

very strongly felt, did not suggest there had been a breach in editorial standards, and so an appeal against the decision to close the complaints did not have a reasonable prospect of success.

The Head of Editorial Standards 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 (paragraph 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 did not apply in this case. The Head of Editorial Standards considered that decisions relating to which tracks should have been played on *Desert Island Discs* fell within the "editorial and creative output" of the BBC and were, therefore, the responsibility of the BBC Executive.

Request for review by Trustees

The complainants requested that the Trustees review the decision not to proceed with the appeals. Both complainants stated that the BBC had not addressed their points of complaint and requested clarification of the following:

Complainant A said she noted that the BBC had not, in their previous correspondence, disputed the complainant's statements that "the words of Exodus and the Israeli National anthem are racist, in claiming the land for one people exclusively, and driving out, by force, peoples who have been living there for thousands of years".

Complainant A also said: "The BBC states that it is permissible to broadcast this in the context of *Desert Island Discs* because 'it (could) not be perceived as the BBC ... expressing its own opinion'... Following the logic of this, a *Desert Island Disc* guest who had great affection for Palestine and Palestinians, would be allowed to choose songs calling for the forcible removal of all other peoples, and the BBC would broadcast them". She asked for clarification on this point.

Complainant A took issue with the BBC's attempt "to justify the 'context' argument by saying "...the programme did not explore (Julie Burchill's) political views or invite her to articulate a partial viewpoint on the current political situation in the Middle East, and so we do not consider that it constituted a breach of the BBC's Editorial Guidelines on impartiality'." The complainant compared this line of argument about *Desert Island Discs* with the editing of the lyrics "Free Palestine" in the 2010 broadcast of the Mic Righteous song on Radio 1Xtra. She considered that using the BBC's logic, the Mic Righteous song should have been played in full because the Radio 1Xtra programme did not explore Mic Righteous' political views or invite him to articulate a partial viewpoint on the current political situation in the Middle East either.

Complainant B also compared the *Desert Island Discs* case with the Mic Righteous case and said that the BBC had failed to explain why the words "Free Palestine" were edited from Mic Righteous' freestyle. She said "I ask again...how can Mic Righteous rapping his own words be seen as the BBC expressing its own opinion? It cannot. However, if Mic Righteous rapping his own words on a BBC show can be seen as the BBC expressing its own opinion, then, in exactly the same way, the playing of another country's national anthem, with controversial lyrics that claim land for one people only, can also be seen as the BBC expressing its own opinion."

Complainant B said that the lyrics of the Israeli National anthem ignore "the 20% of the

Israeli population which is not Jewish, and, as well as being offensive to that 20%, are grossly racist in that sense. The lyrics are overtly aimed at one race only, and omit the Arab identity of a fifth of Israel's citizens". She asked what context could justify what she said were "exclusionist, racist songs being played on the BBC" and said that the BBC had not yet explained this.

The Committee's decision

The Committee was provided with the complainants' appeals to the Trust, the response from the Head of Editorial Standards, BBC Trust, and the complainants' letters asking the Committee to review her decision. The Committee was also provided with the programme in question.

The Committee noted that the question before it was whether there was a reasonable prospect of success for an appeal against the decision of BBC Audience Services not to respond further to the complaint.

The Committee noted that the BBC had responded at Stage 1 saying:

"It's important to bear in mind the context in which each song was broadcast and we feel that the two scenarios are completely different. Deciding whether or not to play Mic Righteous in our normal music schedule was a BBC decision based on concerns that it could have been perceived as bias. *Desert Island Discs* on the other hand is clearly labelled as a programme where the guest chooses their favourite records and explains why. It cannot be perceived as the BBC (as an organisation) expressing its own opinion, plus the context for playing each tune is explained."

The Committee noted also that the producer of the programme had explained why she did not consider that the inclusion of this music in *Desert Island Discs* constituted a breach of the Impartiality Guidelines:

"As I'm sure you are aware, the choice of tracks has always been inextricably linked to the editorial brief of the programme. For the past 70 years, we've been asking our guests to choose 8 tracks of personal importance or significance to them. We never seek to influence the choice of tracks and indeed over the years the programme has played many songs that some would regard as politically-inspired – from folk and miners' songs to anthems, as was the case here.

"Julie Burchill is well-known for being fascinated by Israel and her music choices merely reflected that. The programme did not explore her political views or invite her to articulate a partial viewpoint on the current political situation in the Middle East, and so we do not consider that it constituted a breach of the BBC's Editorial Guidelines on impartiality. Additionally, over time the programme features a wide spectrum of guests with a diversity of views and backgrounds – all welcome to make the same free choice of music."

The Committee agreed that at Stage 1 the BBC had provided reasoned explanations of the context of Julie Burchill's particular song choices as well as the overall concept of *Desert Island Discs*.

The Committee was satisfied that the responses at Stage 1 had explained the differences between the editorial decisions made in *Desert Island Discs* and on 1Xtra regarding Mic Righteous. The Committee did not agree that the perceived differences in the BBC's

approach to these two very different items of output constituted sufficient evidence of a breach of the Editorial Guidelines to warrant further investigation at Stage 1.

The Committee agreed that the two cases being compared by the complainants were very different. The Committee agreed with the Trust's Head of Editorial Standards that the complaints about *Desert Island Discs* at Stage 1, whilst clearly very strongly felt, did not demonstrate that there had been a breach in editorial standards, and so an appeal against the decision by BBC Audience Services to close the complaints would not have a reasonable prospect of success.

The Committee therefore agreed that there was no reasonable prospect of success for an appeal against the decision at Stage 1 not to correspond further.

In coming to its decision the Committee was mindful that previous complaints about the application of a sound effect to a performance by Mic Righteous on 1Xtra had not been accepted on appeal as Trustees considered that

"while the BBC's treatment of the matter had perhaps been overcautious, the effect of removing the word 'Palestine' did not render the material which was broadcast biased."

The Committee noted that the complainants' appeals to the Trust and responses to the Head of Editorial Standards' decisions had included allegations that music played in *Desert Island Discs* had been offensive. The Committee noted that these points had not been raised in the initial complaints at Stage 1 and were therefore not material to the Committee's consideration of whether the handling at Stage 1, and specifically the decision not to investigate further, had been appropriate.

The Committee noted that both complainants had asked when the full Mic Righteous track would be played in full. The track had been played in full on Radio 1Xtra on 9 July and 12 August 2011.

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